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ELECTION COMMISSION, INDIA

NOTIFICATION

*New Delhi, the 6th October, 1956*

**S.R.O. 2541.**—Whereas the election of Shri Brij Sunder Sharma as a member of the Legislative Assembly of the State of Rajasthan from the Sironj constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Abhinna Hari, resident of 186, Bhimganj Mandi, Kotah (Rajasthan);

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

On an appeal filed by Shri Brij Sunder Sharma the High Court of Judicature for Rajasthan, Jaipur Bench, has set aside the said order of the Tribunal declaring the election of the successful candidate to be void *vide* the High Court's judgment dated the 27th August, 1956 (Annexure I).

BEFORE THE ELECTION TRIBUNAL, JAIPUR.

ELECTION PETITION NO. 4 OF 1954

Pt. Abhinna Hari son of Pandit Ram Gopal, resident of 186 Bheemgunj Mandi, Kotah (Rajasthan)—*Petitioner.*

*Versus.*

1. Shri Brij Sunder Sharma, Advocate, resident of 'C' Scheme, Jaipur,—*Respondent No. 1.*
2. Shri Madan Lal Agrawal, Resident of House No 1/945, Mohalla Salhatpat, Sironj, District Kotah,—*Respondent No. 2.*
3. Shri Kesri Mal Jain, Mohalla Lotia Dhana, Sironj, Distt Kotah,—*Respondent No. 3.*
4. Shri Radha Ballabh Bhargava, Occupation Business, resident of Sironj, Distt. Kotah,—*Respondent No. 4.*
5. Shri Ghan Shyam Bhargava, Pleader, Sironj, Distt. Kotah,—*Respondent No. 5.*
6. Shri Abdul Gafar Khan *alias* Achhan Mian, Contractor, resident of Sironj, Distt. Kotah,—*Respondent No. 6.*

7. Shri Guttulal Garg, Bidi Manufacturer, resident of Sironj, District Kotah,—*Respondent No. 7.*
8. Shri Shri Krishna Bhargava, Pleader, Sironj, District Kotah,—*Respondent No. 8.*

Election petition relating to the bye-election held on the 15th November, 1953, to the Rajasthan Legislative Assembly in the Sironj Constituency.

#### PRESENT

Shri A. N. Kaul,—*Chairman,*

Shri S. N. Gurtu,—*Member.*

Shri R. K. Rastogi,—*Member.*

Shri Ved Pal Tyagi Advocate & Shri Ram Krishna Purohit, Pleader, for the petitioner.

Shri Chiranji Lal Agrawal & Shri Sharma Ramesh Chandra, Advocate for respondent No. 1.

#### JUDGMENT

(*Per Kaul Chairman.*)

This election petition arises from bye election to the Rajasthan Legislative Assembly for the Sironj Constituency held on the 15th November, 1953. Respondent No. 1, the successful candidate stood on the Congress ticket and the only candidates who actually contested the election were respondents 2 and 3 who were the candidates of the Hindu Maha Sabha and the Praja Socialist Party. Respondent No. 1 secured 8892 votes while respondents 2 and 3 secured 8366 and 1182 votes respectively. The petitioner, who is a resident of Bhimgunj Mandi in the Ladpura Constituency of the Kotah District, had filed four nomination papers in which the serial numbers in column No. 8 were filled on the basis of the Electoral Roll of Ladpura Constituency for the year 1951, but had filed a certified copy of the revised Electoral Roll for the year 1952, which was actually in force, on the 9th October, the date of scrutiny along with an application for correction. The application was, however, not accepted by the Returning Officer and the nomination forms were rejected on the objections of respondent No. 1 to the effect that the petitioner had wrongly filled serial numbers in column No. 8 of the nomination forms from an electoral roll which was not in operation and this was a defect of a substantial character and that corrections could not be allowed at that stage. The election petition was filed with the allegations, *inter-alia*, that the petitioner's nomination was improperly rejected; that the improper rejection has materially affected the result of the election; that ever since the decision of the Rajasthan Pradesh Congress Committee to set up respondent No. 1 as a Congress candidate for the bye election he managed the transfers of State servants with the help of ministers in order to help him to further the prospects of his election; that the respondent himself and through his agents took the assistance of a number of Government servants as per details given in Schedule I to further the prospects of his election; that the respondent himself and through his agents committed the corrupt practice of undue influence as per particulars given in Schedule II by getting it preached by Muslim Leaders that Muslims as a community shall have to quit the country if they did not cast their votes in favour of the nominee of the Congress which was characterised as the saviour of Indian Muslims and the said leaders also administered oaths of Quoran to the voters to follow its dictates to support the party in power and its candidate; and that the polling at the Ladies' Polling Booth at Raoji ka Bagh in Sironj had been purposely delayed at the instance of respondent No. 1 and his agents for nearly three hours with the result that about 400 ladies who wanted to cast their votes against the Congress had to return from the booth. It was further alleged in the petition that the Constituency was visited by almost all the Ministers of Rajasthan who had toured the Constituency along with respondent No. 1 in State Cars with the national flag flying and accompanied by District Officers whose presence influenced the catching of votes for the Congress candidate; that respondent No. 1 had submitted a false return of election expenses having deliberately withheld certain items of expenditure of which the details are given in Schedule III and that the expenditure incurred by the respondent was much more than the prescribed figure. On the basis of these allegations, it is prayed that the election of respondent No. 1 be declared as wholly void and that a direction be given for holding a fresh election from the Sironj Constituency.

Schedule No. I contains eight items of which Nos. 1, 6, and 8 relating to the alleged assistance rendered to respondent No. 1, by Shri Hari Singh Jat, Chief Panchayat Officer, Rajasthan, Shri Bakshi, Executive Engineer, Bundi, and Shri Shivraj Singh, Sub-Inspector, Police, respectively are the only ones which now remain the subject of decision.

Schedule No. II contains the names of Shri Hifzur Rahman, Leader of the Jamiat-ul-Ulma and His Highness the Nawab Saheb of Tonk and the names of the places at which they are alleged to have preached to the Muslims.

Schedule III relates to the return of election expenses filed by respondent No. 1 from which certain election expenses are said to have been withheld and contains four items of which only Nos. 1 and 4 now remain the subject of decision. Item No. 1 relates to the food expenses of about 400 workers who are alleged to have been fed by respondent No. 1 through community kitchens started at a number of places and No. 4 relates to the travelling allowance alleged to have been paid by respondent No. 1 to his wife and other workers who went from distant places to canvass for him.

Only respondent No. 1 and 3 filed written statements. Respondent No. 1 who is the only contesting respondent, denies in his written statement that the petitioner's nomination paper was improperly rejected or that the rejection has materially affected the result of the election. He also denies the commission of any of the corrupt practices alleged against him and even knowledge of the transfers of officers alleged to have been made at his instance. He specifically denies the allegations contained in the particulars supplied through schedules I, II, & III. The petitioner on being directed by the Tribunal filed further and better particulars by submitting amendments in Schedule I which are marked as Schedules I A and B. The petitioner and the contesting respondent were also examined for elucidation of certain points in their pleadings. On the basis of the pleadings and statements as supplemented by the schedules and the statements of the parties, as many as seventeen issues were framed of which issue No. 1 being a preliminary issue, was decided by this Tribunal's order dated the 12th October, 1954, and two other preliminary issues No. 16(c) and 17 were decided by the Tribunal's order dated the 4th April, 1955. By the latter order certain issues were dropped and one issue was amended. Certain other issues namely issues No. 3 4(a), 5, 8, 11, 13, and 14 were not pressed by the parties at the time of arguments and the issues which now remain for decision are as follows:—

(2) Whether the petitioner's nomination was improperly rejected and the rejection has materially affected the result of the election.

6. (a) Whether Shri Shivraj Singh S.I. was transferred from Jepila to Sironj at the instance of respondent No. 1 in order that he may exert his influence to help respondent No. 1 in his election and actually intimidated voters in the respondent's favour by prosecution of some of them

(b) If so, what is the effect on the result of the election.

7. (a) Whether Shri Bakshi, Executive Engineer, Irrigation at Bundi, toured the constituency at the instance of respondent No. 1 towards the end of September, and beginning of October, 1953, in order to further the prospects of respondent No. 1 in the bye-election.

(b) If so, what is the effect on the result of the election

9. (a) Whether Shri Hari Singh, Chief Panchayat Officer aided by Shri M. L. Bhavya, District Panchayat Officer, Kotah, at the instance of respondent No. 1 asked panchas of the Sironj Sub-Division at Sironj between the 5th and 12th August, 1953, to secure votes for respondent No. 1.

(b) If so, what is the effect on the result of the election.

10. (a) Whether Shri Hifzur Rahman, leader of Jamiat-ul-Ulma, Delhi exercised undue influence on the Muslim voters at Sironj on the 10th and 11th November, 1953, by telling them that Islam was in danger if Muslims did not vote for the Congress and that Muslims will incur displeasure of God if they did not side with their saviours

(b) If so, what is the effect on the result of the election.

12. (a) Whether the polling at Raoji ka Bagh (Havli) polling booth, where the female voters were to cast their votes was purposely delayed at the instance of respondent No. 1 for nearly 3 hours with the result that a large number of female voters who wanted to cast their votes against the Congress had to return without being able to vote

(b) If so, whether this delay materially affected the result of the election.

15. (a) Whether respondent No. 1 fed about 400 workers during the election and the expenses of their feeding have not been shown in the return of election expenses filed by him.

(b) If so, what is the effect on the result of the election.

16. (a) Whether 4 community kitchens at Sironj, and one each at Deepua-Kharg, Anantpura, Ghatal, Lateri, and Unarsi-tal, were started by respondent No. 1 to feed his workers numbering in all about 400 and these expenses should have been included in the return of election expenses filed by the respondent.

(b) Whether travelling allowance were paid by the respondent to his workers of which the list has been filed by the petitioner and these expenses should have been shown in the return of election expenses.

I now proceed to deal with the above issues in serial order excepting issue No. 2, with which I propose to deal last of all.

*Issue No. 6(a).*

The allegation embodied in this issue is connected with paragraphs 10 and 11 of the petition in which it is stated that the respondent, after his selection by the Rajasthan Pradesh Congress Committee as the nominee for the Congress Ticket for the bye-election, managed the transfers of State servants to help him to further the prospects of his election and took the assistance of such Government servants to further his prospects. The particulars relating to this allegation as given in Schedule I are that Shri Shivraj Singh, S.I. Police, was transferred from Jepila to Sironj and there he exerted his influence to help the respondent in his election by intimidating the voters by prosecuting some of them before actual polling started. In his statement under O. 10 r. 1, the petitioner further stated in regard to this item that Shri Shivraj Singh intimidated voters in Sironj proper about four or five days before the polling day by racing his horse through a meeting which was being held there on behalf of the Socialist Party, being at that time armed with a pistol and that he prosecuted some of the workers who were taking part in the meeting. It was further alleged that some prominent workers of the Praja Socialist Party and the Hindu Maha Sabha were prosecuted about 4 or 5 days before polling with a view to intimidate the voters to help respondent No. 1. This issue was amended in the present form by this Tribunal's order dated the 4th April, 1955. The witnesses examined by the petitioner on this issue are P.W. 16 Shri Prem Narain Joshi, P.W. 19 Shri Santosh Kumar Saksona, P.W. 20 Shri Mandan Lal Agrawal, P.W. 21 Shri Kok Singh, and P.W. 22 Shri Kesri Mal Jain. The file of the criminal case under S. 127 of the Representation of the Peoples Act instituted in the Court of the Extra Magistrate, Sironj, against certain persons in connection with the disturbance at the meeting in question has been summoned and placed on record. The witnesses examined on behalf of the respondent on this issue are R.W. 13 Shri Shivraj Singh, R.W. 15 Shri Rang Lal, and R.W. 19, the respondent himself.

It may be stated, at the very outset, that no evidence, whatsoever, has been led on behalf of the petitioner that Shri Shivraj Singh's re-transfer to Sironj Kotwali before the bye-election took place at the instance of respondent No. 1 and as pointed out by Mr. Agrawal on behalf of the respondent, there is no room for a presumption that the retransfer took place at the instance of the respondent.

The main and the most important oral evidence on this point on behalf of the petitioner is that of Shri Prem Narain Joshi P.W. 16, who is the Secretary of the Hindu Maha Sabha Branch at Sironj and who was one of those prosecuted under S. 127 of the Representation of the People Act for allegedly disturbing the meeting in question. He has stated that, at a meeting organised by the Congress party on the night of the 27th October, 1953, in support of the candidature of the respondent, Shri Rang Lal of Bundi who was one of the speakers at the meeting made certain remarks to which several persons from the audience objected and due to which a breach of the peace was apprehended; that someone went to the Police Station to give information of this with the result that Shri Shivraj Singh S.I. accompanied by some police constables arrived on the horse back at the place of the meeting and ordered all the persons who were standing including the witness to disperse. But while other persons dispersed and ran to the shops, the witness himself insisted on remaining there whereupon Shri Shivraj Singh pointed his revolver towards the witness and threatened to take him to the Kotwali under fetters. The witness has further stated that

10 persons including himself, most of whom were Hindu Maha Sabha workers and some of them members of the Praja Socialist Party and independents, were prosecuted under S. 127 of the Representation of the People Act. He has admitted in cross examination that the persons who had objected to the speaker Shri Ranglal's remarks, had also declared at the meeting that if he made such remarks, there shall be trouble (jhagra)

P.W. 19 Shri Santosh Kumar Saxena states in regard to the meeting in question that while a speaker was addressing it some members from the audience objected to the remarks made by the speaker against the Agarwal Samaj followed by some heated exchanges after which Shri Shivraj Singh came to the meeting racing his horse and demanded dispersal of the assembly by brandishing his revolver and even threatened to shoot Shri Prem Narain Joshi. The prosecution of some of the workers of the Hindu Maha Sabha and the Praja Socialist Party followed one or two days latter but the accused persons were subsequently discharged. According to the witness the case had the effect of creating a fear in the mind of the local workers that it would be risky to canvass for the non-congress party candidates.

P.W. 20 Shri Madan Lal Agarwal, who is the defeated Maha Sabha candidate at the bye-election, states that while Shri Rang Lal, who is an Agarwal was saying something as to the duty of Agarwals, he was interrupted by some members of the audience and asked to reserve those remarks for Bundi as Sironj was not Bundi following which Shri Shivraj Singh came on horse back to the meeting and he dispersed it.

P.W. 21 Shri Kok Singh states that some of the persons attending the meeting quarrelled amongst themselves whereupon Shri Shivraj Singh appeared on the scene and dispersed the persons who were quarrelling by threatening them with a pistol. The witness stated in reply to a question by the Tribunal that there had been an actual exchange of blows between the persons attending the meeting.

P.W. 22 Shri Kesri Mal Jain, who was the P.S.P. candidate at the bye-election states that while Shri Ranglal was addressing the meeting, he sent a chit to the Kotwal after which the latter arrived at the meeting on horse back and asked certain workers of non-Congress Parties to disperse and even threatened to shoot them with his pistol as a result of which the meeting dispersed. He goes on to say that the Kotwal even took away some of the persons to the Kotwali and they were later prosecuted.

R.W. 13 Shri Shivraj Singh states that while he was Incharge of the Sironj Police Station, during the bye-election he once received a report from a Constable on duty at a meeting held on behalf of a party that there was likelihood of some disturbance in the meeting whereupon, he immediately proceeded to the meeting on horse back, and found that it was a Congress meeting; that a large number of persons were surrounding Shri Rang Lal, President of the meeting and he was given to understand that some people had even caught hold of Shri Ranglal's throat. The witness immediately removed the persons disturbing the meeting and warned them to leave whereupon they dispersed and left the meeting. Shri Ranglal gave the witness a written report naming certain persons as disturbers who were not allowing him to speak on the basis of which the witness made a complaint in the Court of the Sub-Divisional Magistrate, Sironj, against 10 to 11 persons under some provisions of the Representation of the People Act. The witness denied that he pointed a revolver at Shri Prem Narain Joshi that he threatened any one else with it or that any one was arrested and taken under handcuffs but admitted that he had warned that in case there was further disturbance, the meeting might be declared an unlawful assembly and the usual consequences might follow. In cross examination the witness stated that he remained posted at Sironj from July 1952 to March, 1954, and denied that his transfer from Kotah to Sironj was effected at the instance of the respondent. On the contrary he stated that the transfer was the result of the displeasure of the Superintendent Police, Kotah in 1952. He has further stated in cross-examination that during his posting at Sironj, he was deputed temporarily for about 2 months at Jepila as a Sub-Inspector in connection with a complaint against the Sub-Inspector of Jepila but his permanent posting during this period of deputation continued at Sironj.

R.W. 15 Shri Rang Lal has stated that while he was addressing the meeting in question, which was held in support of the Congress Candidate some persons who were in opposition resorted to rowdism and some of them even surrounded him. During the scuffle which followed his shirt was pulled and its buttons

were broken. Some police constables were present at the meeting and after the rowdyism had continued for about 20 minutes, the Sub-Inspector, Sironj, arrived on horse back with some more police force and warned the rowdy people to disperse, as a result of which some people ran away and some dispersed. Immediately afterwards, the witness made a written report on the spot about the disturbance and the persons concerned were prosecuted. In cross-examination, the witness explained that the complaint regarding the disturbance was dismissed because he could not afford to go at his own expense to Sironj after the bye-election in order to attend the trial.

The respondent has, in his evidence, denied that he had any hand in the re-transfer of Shri Shivraj Singh to Sironj or that he even knew anything about it and also denied that at his instance, Shri Shivraj Singh intimidated any voters of the constituency or launched any prosecution against any workers of the other parties. In regard to the criminal complaint against certain persons who disturbed the meeting, he states that he himself had asked Shri Rang Lal after the case had been instituted not to pursue the matter and as a result of the advice, he decided not to attend the court in connection with the complaint.

A perusal of the record of the criminal case under S. 127 of the Representation of the Peoples Act also shows that a chit was sent to the Kotwal from the meeting reporting the disturbance that a report relating to an offence under S. 127 of the Representation of the Peoples Act was recorded by the Sub-Inspector on the same day and a complaint was made on the 28th October to the Sub-divisional Magistrate, Sironj, in this connection against 10 persons inclusive of Shri Prem Narain Joshi. The Sub-divisional Magistrate issued summonses against these persons and on their appearance, the case was transferred to the Court of the Munsiff Magistrate. The learned Magistrate passed an order on the 21st December, 1953, dismissing the complaint, under S. 247 Cr. P.C. in default of the appearance of the complainant and acquitted the accused persons.

It is obvious from the evidence of Shri Prem Narain Joshi and Shri Kok Singh witness of the petitioner himself that there were hot exchanges in the meeting between the speaker Shri Ranglal and certain members of the audience and an actual scuffle leading to an apprehension of a breach of the peace, that a report of these developments was sent to the Kotwal through a chit and thereupon the latter rushed on horse back to the place of the meeting and took steps to disperse those who were disturbing the meeting. It is in the evidence of Shri Shivraj Singh that the place of the meeting is three quarters of a mile from the Kotwali and it was, therefore, in the fitness of the things that the Kotwal rushed on horse back to the place of the meeting on receiving the report as to the disturbance. Whether he pointed a pistol or not at the meeting at any alleged disturbers, is hardly material to the point in issue but there seems to be no doubt that the Sub-Inspector would have failed in his duty if he had not rushed to the meeting and had not taken steps to restore order and prevent deterioration in the situation by removing the alleged disturbers from the meeting. As for the prosecution of the alleged disturbers what the Sub-Inspector did was only to forward the complaint to the Sub-divisional Magistrate. The original allegation that some persons were arrested or taken to the Kotwali by the Kotwal is obviously incorrect as the accused persons appeared in the Court in response to summonses issued by the Sub-Divisional Magistrate. There appears to be no reason whatsoever, to think that what the Sub-Inspector did at the meeting was part of a plan pre-conceived between the Sub-Inspector and the respondent, or even that the prosecution was launched by the Sub-Inspector at the respondent's instance. Whether the complaint under S. 127 of the Representation of the People Act should strictly speaking have been made by the Sub-Inspector also does not appear to be material for there is no reason to think that the Sub-Inspector, at any stage in this matter, acted mala fide. This disturbance of a meeting organised by the Congress party and its dispersal by the Sub-Inspector could very well have been a matter of grievance for the Congress Party. My finding on the issue is in the negative. Issue 6(b) does not arise.

#### *Issue No. 7(a)*

This issue is connected with para 11 of the petition containing allegations of assistance received by the respondent to further his prospects at the election and with schedule I containing particulars of the alleged assistance. Item 6 of the Schedule says that Shri Bakshi, Executive Engineer, Irrigation, Bundi, "toured the Constituency and assured the inhabitants to construct the new tanks and repair the old ones if Congress is helped by the voters", and also "helped the respondent No. 1 in raising funds for election". The last allegation was given up at the time of framing issues but in the supplementary schedule IA,

submitted by the petitioner by way of better particulars certain important additions were made to item 6 namely that the aforesaid tour of the constituency was undertaken by Mr. Bakshi "at the instance of respondent No. 1" towards the end of September and beginning of October, 1953.

The only witnesses who have given evidence on the issue are P.W. 10 Shri Mohammad Khan; P.W. 17, Sheikh Chand Khan, P.W. 14 Shri Ghanshyam Saran Bhargava & P.W. 22 Shri Keshri Mal Jain on behalf of the petitioner and R.W. 8 Shri Furkhan Ali and R.W. 12 Shri N. N. Bakshi on behalf of the respondent. The first two witnesses namely P.W. 10 and P.W. 17 refer to a visit of Shri Bakshi to the tank at Sironj during which he is said to have made certain observation in support of the Congress candidate. P.W. 10 says that 3 or 4 days before the election by which, according to a subsequent connection, he meant the day fixed for filing of nomination papers, Shri Bakshi came to Sironj and during that visit one evening, in the presence of the witness Mr. Bakshi was telling a number of persons, who were present at the tank, that they should vote for the Congress candidate and he would remove their difficulties and would repair the tank. The witness is the Deputy Secretary of the P.S.P. Organisation for Sironj area and worked for the defeated P.S.P. candidate Shri Keshrimal Jain, during the bye-election.

P.W. 17, the other witness regarding the same episode says that Shri Bakshi came, during the bye-election to survey a tank and in the witness's presence told some persons who had assembled at the tank that he had been deputed by Shri Brij Sunder to make the survey and asked the people to vote for the Congress, adding that if they did so there would be improvements affected in the amenities of the City. In Cross-examination the witness stated that the tank, not having been built of pucca masonry, dries up 4 to 5 months after the rainy season and Mr. Bakshi had promised that it would be deepened and made pucca but the promise did not materialise. This witness also admittedly worked, during the bye-election in support of the P.S.P. candidate Shri Keshri Mal Jain.

P.W. 14 Shri Ghanshyam Saran Bhargava says that during Shri Bakshi's visit for the survey of the tank at Sironj, he met the witness accidentally in the court compound of the the S.D.M. and the witness was introduced to him by Shri Furkhan Ali, Road Inspector, Sironj as a pleader. On witness's expressing his pleasure to Shri Bakshi that he had come to make a survey of the tank, the latter remarked that Shri Brij Sunder was going to contest the bye-election and it was he who had sent him to make the survey. Shri Bakshi is said to have made a further observation that in case Shri Brij Sunder was returned more improvements would follow and hoped that all of them would support his candidature. The witness was a candidate at the bye-election whose nomination paper was rejected at the time of scrutiny.

P.W. 22, Shri Keshri Mal Jain, who was the P.S.P. candidate at the bye-election says merely that Shri Bakshi, whom he calls as the Engineer for buildings and roads, came for a survey of the tank at Sironj in connection with its proposed expansion for which there had been a demand since the time of the erstwhile Tonk State. In the witness's presence Shri Bakshi is said to have asked the people on that occasion to vote for Shri Brij Sunder Sharma and to have observed that in case the latter was elected the tank would be expanded and other amenities would follow.

P.W. 8 Shri Furkhan Ali, Road Inspector, Sironj denies that he ever introduced Shri Ghanshyam Saran to Shri Bakshi during the latter's visit. In cross examination he says that he was throughout with Shri Bakshi during his visit and that he did not say anything regarding Shri Brij Sunder's efforts for improving the tank.

R.W. 12, Shri N. N. Bakshi, who is the Executive Engineer, Irrigation, for the whole of Kotah Division including Sironj Sub-division, states that he went to Sironj after the rains in 1953 somewhere towards the end of September for investigating the possibilities of irrigation in that area, the Assistant Engineer having already been there 3 or 4 times before this and having started some work. The witness visited partially all the tanks in Lateri, Sironj and the countryside. He has stated that he had nothing to do with the Courts and denies having gone to the Court compound or having been introduced to any pleader at any time during the visit or having made any statement to anyone to the effect that the irrigation works which were being surveyed would be rapidly completed in case the people at Sironj supported Shri Brij Sunder Sharma, who was standing for the bye-election. He further states that the question of his making any such statement to any person from the public

did not arise since there was no body present at the tank except the P.W.D. Gang Moharir and the overseer of the Irrigation Department. In cross examination he admitted that his head quarters had been shifted from Kotah to Bundi some time in November, 1950. He further stated, in cross examination that he only inspected the tank at Sironj and made no survey, that there was no crowd or collection of people at the time of his inspection and that he stayed at Sironj for about 2 days. According to the witness there was some survey of tanks in Sironj Sub-division for the first time in 1952 and again in January 1953, after a receipt of a letter from the S.D.O. or Tehsildar Sironj, sometime in 1952 or 1953, about the repair of some tanks in that areas but survey could not be undertaken immediately since there was no staff then available. He also explained that he could not go to Sironj before September owing to the rainy season in Sironj during which it is not possible to go to that area by car.

In his evidence the respondent stated that during his stay at Sironj Shri N. N. Bakshi never visited the place and at least did not meet him nor did he get information about his visit to that place during the period.

It will be seen from the above narrative of the evidence, on this issue, that the only witness as to the remarks Shri Bakshi is alleged to have made during the visit to the Court compound, is Shri Ghanshyam Saran Bhargava, whose nomination paper was rejected at the time of scrutiny of nomination papers during the bye-election. The file of nomination papers along with other documents connected with the bye-election was summoned from the Returning Officer's office and has been placed on record at the instance of the petitioner himself. It appears from the nomination file of this witness that his nomination paper was rejected on the objection of the respondent himself that he had been dismissed for misconduct and corruption. In the circumstances the witness cannot be considered as disinterested or reliable. For other reasons also it is difficult to rely on the evidence of this witness for, while he states that he was the candidate of the Hindu Mahasabha at the bye-election and Shri Madanlal was his covering candidate. The latter who actually contested the election, on behalf of the Hindu Mahasabha has stated, in cross examination, that it was the Sanyukt Dal and not the Hindu Mahasabha which had set up Shri Ghanshyam Saran on its own ticket and that he was under no obligation to withdraw the nomination in case the nomination paper of Shri Ghanshyam Saran had been accepted. P.W. 16 Shri Prem Narayan Joshi, who is the local Secretary of the Hindu Mahasabha has also stated that Shri Madanlal was the Hindu Mahasabha candidate and that Shri Ghanshyam Saran was not the candidate on behalf of the Sabha. From all this it does not appear that Shri Ghanshyam Saran is a very truthful witness. Moreover it is difficult to believe that, immediately on the first instruction of a vakil in the court compound Shri Bakshi, a responsible officer, should have started canvassing support for the respondent without even knowing the antecedents or affiliation of the witness.

As for the evidence of Shri Kesrimal P.W.22 he is also the defeated P.S.P. candidate and apart from this fact which raises doubts as to the disinterested nature of his evidence, he does not say specifically at what place and time and in whose presence Shri Bakshi made the alleged observations to the people who had collected there. He does not speak of the presence of P.W. 10 or P.W. 17, who have given evidence as to the alleged episode at the tank. In the circumstances the evidence of this witness also cannot be relied on. The remaining two witnesses P.W. 10 and P.W. 17 were both active workers for the P.S.P. candidate, the former having been the Deputy Secretary of the Local, P.S.P. Organisation. For that reason alone their evidence cannot be considered as disinterested. It further appears from the record of P.W. 10's evidence that he at first gave the time of Shri Bakshi's visit as 3 or 4 days before the election which could only have meant the polling day i.e. the 15th November, 1953. But after his learned Counsel had observed that by the word election he meant the day fixed for filing nominations, the witness corrected himself to that effect and said that Shri Bakshi had come 3 or 4 days before the day fixed for filing of nominations. This seems to show that the witness himself was not sure about the time of Shri Bakshi's visit and if the visit took place near about the polling date, the date conflicts with the one stated by the petitioner in Schedule I-A. The other witness P.W. 17 thus remains the only witness of this episode and not being a disinterested witness it is not possible to base a finding on his evidence. It will also be seen that, while P.W. 10 does not say that Mr. Bakshi spoke anything about his having been seen for the survey by the respondent, according to P.W. 17, Shri Bakshi said that he had been deputed by Shri Brij Sunder himself to make the survey. It is also significant that in the particulars supplied in Schedule I with the petition it was not stated that what Mr. Bakshi did was at the instance of the respondent and it was only in the revised Schedule I-A that



this specific allegation was added. It may be that the denials of Shri Bakshi and Shri Furkhan Ali, Road Inspector, who have given evidence on behalf of the respondent may not be of much value, since they were not expected to admit the allegations against them if they had really acted in an objectionable manner. But it does appear from Shri Bakshi's evidence that the preliminary survey of the tanks had been already made by an Assistant Engineer in 1951-52 at the instance of the S.D.O. and it was after the rainy season that Shri Bakshi came to inspect the tank.

For the foregoing reasons the evidence of the petitioner's witness on this issue does not appear to be reliable and the finding on the issue is in the negative.

In view of the above finding issue No. 7(b) does not arise.

*Issue No. 9(a)*

This issue is connected with para 11 of the petition relating to the alleged assistance given by certain Government servants in furtherance of the prospects of respondent's election and with Schedule I annexed to the petition of which item No. 1 is to the effect that Shri Hari Singh, Chief Panchayat Officer, Rajasthan, went to Sironj and had a talk with the Panchas of that area to arrange votes for the Congress candidate. In the revised Schedule I-A it was stated, by way of better and further particulars that, in August 1953, the Chief Panchayat Officer, Shri Harisingh, at the instance of Respondent No. 1, called a Sammelan of Panchas and asked them to arrange for Congress votes. In his statement under O.10.r.1 the petitioner further stated that the Sammelan of the Panchas of Sironj sub-division was held at Sironj on two consecutive dates between the 5th and the 12th August 1953 and Shri Harisingh Chief Panchayat Officer, asked the Panchas at the Sammelan to arrange for votes for the Congress Candidate. The respondent of course denied the truth of the allegations contained in para 11 and stated that they were at tissue of lies.

On behalf of the petitioner only two witnesses namely P.W. 14 Shri Ghanshyam Saran Bhargava and P.W. 19 Shri Santosh Kumar have given evidence on the issue. On behalf of the respondent the only witness examined is R.W. 1 Shri Harisingh, Chief Panchayat Officer. P.W. 14 states that Shri Harisingh, Chief Panchayat Officer visited Sironj about two months prior to the date of polling and held a Camp of the Panchas and Sarpanchas of the sub-division. A meeting is also said to have been called on the occasion at which the Chief Panchayat Officer invited influential and respectable citizens and party leaders numbering about 40 including the witness and some Government officials besides the Panchas and Surpanchas. At this meeting the Chief Panchayat Officer is said to have delivered a speech in the course of which he observed that it was Shri Brij Sunder Sharma who, as Minister-in-charge of the Gram Panchayats in Former Rajasthan got the Gram Panchayat Act enacted and the Panchayats established. Shri Harisingh is further said to have observed during his speech that Shri Brij Sunder was going to contest the bye election and he (the speaker) expected the Panchas and Surpanchas and others to extend their support to Shri Brij Sunder adding that he was not satisfied with the working of any of the Panchayats and they were likely to be dissolved and that in case Shri Brij Sunder was elected he would extend all possible help to the Panchayats which then would not only be allowed to stay but their working would also improve. The witness also said something about the speech of Shri Ram Karan Joshi, the then Minister of Local-self Government who presided over the meeting, but since this allegation is not contained in the particulars in Schedule I, it cannot be considered. In cross-examination the witness further stated that the occasion of the meeting was the inauguration of the Panchayat Camp and that amongst respectable persons invited to the meeting were Shri Santosh Kumar, Shri Laxmi Chand, Shri Prem Narain and Shri Kesri Mal Jain.

The other witness Shri Santosh Kumar Saksena, P.W. 19, who is a member of the Municipal Board, Sironj, states that the Chief Panchayat Officer came to Sironj 2 to 3 months before the polling day and that the witness was invited to attend the inauguration of a camp of Panchas and Sarpanchas at Sironj by Shri Ram Karan Joshi, the then Minister for Local-self Government. Thirty to forty of the elite of Sironj are said to have been present as invitees. According to the witness the Chief Panchayat Officer addressed those assembled, after the inauguration ceremony and said that Shri Brij Sunder Sharma, while he was a Minister in Former Rajasthan was the author of the Panchayat Act and if he be elected and appointed as a Minister in the Government they might expect better legislation. The witness admitted that he is a worker of the P.S.P. and had canvassed for the P.S.P. candidate.

R.W. 1, Hari Singh, who was also ressumoned for evidence stated that the Panchayat Sammelan at Sironj was held on the 26th, 27th and 28th June, 1953, having been called by him as a sort of conference-cum-training camp of all the Panchas of that area, that the invitations to the gentry of Sironj on the occasion of the inauguration ceremony were not issued by the Panchayat Department but by the local officers such as the S.D.O., that the general notice inviting the Panchas and Surpanchas to the conference was issued on the 19th June, 1953, after the Minister for Local-self Government had on the 19th June telephonically approved on the proposed dates for the conference. The witness further stated on the basis of his record that he had submitted a note on the 9th April 1953 suggesting such a conference at Sironj and had discussed the matter personally with the Minister for Local-self Government on the 28th April. Nine such Sammelans were held at different places in Rajasthan in the year 1953. Seven in 1954 and Twenty in 1955, there being a budget provision for such Sammelans which was Rs. 20,000 in 1953. The witness denied that in his speech at the inauguration ceremony he had stated anything as to the respondent having been the author of the Panchayat Act in Former Rajasthan or as to any expectations of better legislation. In fact, according to the witness, legislation in connection with the Panchayats was already before the Rajasthan Assembly and at that time the witness did not even know that Shri Brij Sunder was going to stand in the bye election from Sironj. In cross-examination the witness added that the Panch Sammelan was part of a chain or series of Sammelans and that it was inaugurated by the Minister, Local-self Government in accordance with the previous practice.

The respondent in his evidence stated that Shri Hari Singh did not organise the Pancha's camp at his instance and he did not even know at what time any such camp was organised.

As already pointed out under Issue No. 7, P.W. 14 Shri Ghanshyam Saran Bhargava, whose nomination paper was rejected on the objection of respondent No. 1 on the ground of dismissal from service, does not seem to be a disinterested witness and for other reasons also, already explained under that issue, he does not seem to be speaking the truth. According to the witness, the camp was held two months before the date of polling i.e. somewhere about the middle of September but according to the petitioner's statement under O.10.r.1. the camp was held between 5th and 10th August. If, as the witness states, influential and respectable citizens of the place and party leaders were all invited to join the inauguration it is very unlikely that the Chief Panchayat Officer should have on such a public occasion made a speech directly or indirectly seeking support for Shri Brij Sunder Sharma, whose selection as the Congress Candidate by the Central Parliamentary Board had not till then even taken place, since according to documentary evidence on record it was communicated somewhere towards the end of September and even the recommendation by the Pradesh Congress Committee in the respondent's favour was made on the 29th of May. The camp was undoubtedly held from the 26th to 28th June as part of a chain of such Sammelans and whatever might have been the main or subsidiary object of the Sammelan it is difficult to believe that in a gathering of invitees from amongst all parties the departmental head should have openly canvassed support for the Congress candidate. If the officer was daring enough to do so then surely some independent or non-party witness from amongst the 30 or 40 said to have been invited on the occasion could have been produced in support of the allegation. The witness himself has named Shri Prem Narain and Shri Kesri Mal Jain as two of those who were present at the inauguration ceremony but neither the former, who is the Local Hindu Sabha Secretary nor the latter who was himself the P.S.P. Candidate at the bye election were asked to give evidence on this issue. The same observations would apply to the evidence of P.W. 19 Shri Santosh Kumar. He also actively worked for the P.S.P. candidate in the bye election and cannot be said to be a disinterested witness. According to this witness also the camp was held 2 to 3 months before the polling day which can mean the middle of August or September and the time neither coincides with the one given by the petitioner in his statement under O.10.R. 1 nor with the actual dates of the Sammelan as given by the Panchayat Officer from the records.

Moreover, as already pointed out above, it was not stated in the original Schedule I that what the Chief Panchayat Officer said or did at the Sammelan was at the instance of Respondent No. 1 and this particular allegation seems to have been added as an afterthought in Schedule I-A.

The issue also refers to Shri M. L. Bhavya, District Panchayat Officer, Kotah, having aided the Chief Panchayat Officer in this matter. But there is not an iota of evidence on that point in the statement of Shri Ghanshyam Saran and of Shri Santosh Kumar Saksena. Only the Chief Panchayat Officer was asked, in cross examination whether the Panchayat Inspector for the Sironj area was at Sironj

during the bye election to which he replied that he had no information on the point. This part of the allegation was not pressed at the time of arguments.

For the foregoing reasons it cannot be held to be proved that the Chief Panchayat Officer canvassed support for respondent No. 1 at the inauguration ceremony of the camp of Panchas or that if he at all did it he did so at the instance of respondent No. 1. The finding on the issue has, therefore, to be in the negative. Issue No. 9(b) does not arise in the circumstances.

#### Issue No. 10 (a)

This issue is connected with para 12 of the petition in which it is stated that the corrupt practice of undue influence was practised by the respondent himself and through his agents by getting it preached by Muslim leaders to the Muslim male and female voters that Muslims as a community shall have to quit the country if they did not cast their votes in favour of the respondent he being the nominee of the Congress which was characterised as the saviour of Muslims in India. It was further stated in that para that the Muslim leaders administered the oath of Quran to the voters to follow its dictates to support only that party which is in power. It will be seen that, in so far as the first part of the allegation is concerned, it does not by itself amount to a corrupt practice inasmuch as even if preaching in that form was resorted to it amounts only to an argument in favour of the Congress to the effect that as a non-communal party it had protected the Muslims in India and in case a candidate of any other party, particularly a communal party was returned to power the Muslims might have to quit the country. This form of preaching does not amount to intimidation or to undue influence within the meaning of S. 123(2) of the Representation of the Peoples Act read with clause (ii) of its Proviso. The second part of the allegation as to the administration of oath of the Quran to the voters to follow its dictates to support only the party in power and its candidate also does not seem to attract the provisions of S. 123(2) read along with clause (ii) of its proviso. Schedule II, which was referred to in para 12, as containing the particulars of the corrupt practice gives no other details except the names of the persons who preached and the place where they preached. The persons who preached at Sironj are given as Maulana Hifzur Rahman and His Highness the Nawab Sahib of Tonk, but the allegation as to the latter has not been pressed. This Schedule also does not, therefore, furnish any material in support of the allegation of corrupt practice. In the supplementary schedule II-A, however, which was furnished, subsequently by way of better particulars, it was stated that Maulana Hifzur Rahman's preaching to the Muslim voters at Sironj was to the effect that if they did not vote for the Congress they would be punished by God. The allegation as to such a preaching although it seems to attract the provisions of S. 123(2) read with clause (ii) of its proviso, is obviously inconsistent with the particulars already contained in para 12 of the petition as already stated above. I would have been quite justified, in the circumstances, in not dealing with the evidence at all in so far as it is inconsistent with the original allegation in the petition, but I would still consider it in so far as it goes in order to avoid all objections.

The only evidence on the issue is that of P.W. 10 Shri Mohammad Khan, P.W. 12 Shri Yusuf Qureshi and P.W. 17, Sheikh Chand Khan while the evidence in rebuttal, on behalf of the respondent, is that of R.W. 4 Maulana Abdul Rahman. P.W. 10 Mohammad Khan who worked for the P.S.P. candidate at the bye election and is also the Deputy Secretary of the local P.S.P. Organisation, as already stated, says that he attended two meetings addressed by Maulana Hifzur Rahman, President of the Jamiyat-ul-Ulema Hind, Delhi, who visited Sironj during the bye-election. At the first meeting said to have been addressed by the Maulana at the Muslim School known as Takiya, where the Maulana was staying, he is said to have exhorted 40 to 50 leading Muslims of the place, who had collected there, to support, in keeping with the teachings of the Quran and Hadis, the Congress Party, which was in power and was supporting Muslims and is said to have added that a Muslim, who did not act accordingly, would be disobeying the commands of God. It will be seen that in this alleged exhortation there is no direct reference to the incurring of the displeasure of God, which is necessary to bring it within the definition of intimidation u/s 123(2). At the second meeting which was held at Jama Masjid and attended by a large number of Muslims the Maulana is said to have told the audience that, according to the precepts of Islam Muslims should support the Congress since it was the only party which would look after Muslim interests. Obviously there is nothing objectionable in such an exhortation.

P.W. 12, Yusuf Qureshi, a resident of Bhopal who claims to have visited Sironj during the bye election as a journalist and as a reporter of an Urdu Weekly "Naya Sathi" of Bhopal says that at a camera meeting of Muslims the Maulana

after quoting certain Ayats from the Quran explained their substance to the effect that whenever calamities befell Muslims it was due to their not following the commands of God and he further told the audience to remember that if, on this occasion, they did not follow his advice the wrath of God will descend on them. The Maulana is said to have asked the audience to vote for the Congress party. At the Friday meeting of Muslims in Jama Masjid Maulana Hifzur Rehman, after giving a discourse on the condition of the Muslims and having described the Congress programme, is said to have appealed, in the name of religion to the Muslim audience to vote for the Congress candidate because the Congress party was in power and was the protector of Muslims. He is also said to have observed that the other parties particularly the Hindu Maha Sabha were of a communal nature and were not working in the interests of Muslims. It will be seen that in so far as the alleged exhortation at the Jama Masjid is concerned there is nothing legally objectionable contained in it. The witness, however, does not appear to be reliable one from his antecedents and the nature of his evidence.

P.W. 17, Sheikh Chand Khan who also worked for the P.S.P. candidate during the bye election, states that at the Madarsa meeting Maulana Hifzur Rahman told 20 to 22 leading Muslims after reading out the Quran and translating those portions that it was the command of God to Muslims that they should obey the Government of the day and since the Congress was in power it was the duty of the Muslims to support that Government. He is, however, said to have observed that in case Muslims failed to do so they would incur the wrath of God. The witness does not refer to the other meeting at Jama Masjid. The witness's allegation as to the Maulana having invoked the displeasure of God in his exhortation to Muslims is an addition to what P.W. 10 Mohammad Khan has stated. In any case the witness having been a worker of the defeated P.S.P. candidate, cannot be said to be disinterested. If the Maulana really said anything objectionable at any of the meetings it should have been possible for the petitioner to produce independent Muslims of the locality in support of his allegations.

R.W. 4, Maulana Abdul Rahim, who is the president of the local Jamiat-ul-Ulema at Sironj and at whose instance the Maulana is said to have visited Sironj in connection with the work of the Jamiat says that he was throughout with the Maulana having been in charge of the arrangements and denies that the Maulana at any of the meetings made any appeal in the name of religion to support the Congress.

It is not necessary to consider the respondent's evidence in view of the weaknesses in the petitioner's evidence as already pointed out by me. The finding on the issue has, therefore, to be in the negative and I find accordingly. Issue No. 10(b) does not arise in the circumstance.

Issue No. 12(a)

This issue is connected with para. 13 of the petition in which the allegation embodied in the issue has been made. It is alleged in that para. that the polling at the ladies' polling booth at Raoji ki Haveli was purposely delayed upto 11 A.M. at the instance of respondent No. 1 and his agents with the result that about 400 ladies, who wanted to cast their votes against the Congress had to return from the booth. No separate schedule of particulars regarding this allegation is annexed to the petition. The witnesses, who have given evidence on behalf of the petitioner on this issue, are P.W. 2 Shrimati Bhagwati Devi, P.W. 5 Shri Purshottam Das Mantri, P.W. 10 Sayed Mohammad Khan, P.W. 13 Prem Narain Joshi, P.W. 20 Shri Madanlal and P.W. 22 Shri Keshri Mal Jain. The respondent has produced, in rebuttal R.W. 2 Shri Randheer Singh, R.W. 14 Shri Ghan Shyam Das and the respondent himself as R.W. 19.

P.W. Shrimati Bhagwati Devi is a member of the P.S.P. who visited Sironj during the bye election and was a polling agent, at the ladies polling booth, on behalf of Shri Keshri Mal Jain, the Praja Socialist Party Candidate. She states that instead of the scheduled time of 8 A.M. the polling started at the ladies polling booth in question at about 10-30 or 11 A.M. that the Presiding Officer, to whom she complained in writing about the delay, told her that she had not received any instructions till then for starting the polling, that 400 to 500 women voters had to leave the polling station after waiting and only 10 to 12 voters, who were to vote for the Congress were allowed to cast their votes. She further says that when her written complaint had no effect, she called Shri Purshottam Das Mantri, the Praja Socialist Party leader from Kotah, who after making some enquiry also made a written complaint about the matter to which the Presiding Officer gave a reply in writing, the contents of which she did not know.

P.W. 5 Shri Purshottam Das Mantri, Provincial Secretary of the Praja Socialist Party states that at one of the two polling booths at the ladies' polling station, which was presided over by Shrimati Soori, Deputy Inspectress of Girls' Schools at Kotah, polling had not started till 10-55 A.M., that on receiving the complaint at about 10 A.M. he searched for the Praja Socialist Party's candidate Shri Keshri Mal and along with him reached the polling station at 10-30 A.M. and that Shri Keshrimal who had gone into meet the Presiding Officer, told the witness on returning that it was a fact that polling had not commenced at one of the polling booths in the polling station and he had taken this in writing from the Presiding Officer. The document which was handed over to the witness by Shri Keshrimal is Ex. P. 1/P.W. 5 and was produced by the witness. The witness further says that 400 to 500 ladies returned without voting from the polling station and that some of them who were coming out told the witness, on enquiry that the Sarkar wanted the Congress candidate to win and they, who had been waiting there since 8 O'clock in the morning, had not been allowed to cast their votes. In cross examination the witness admitted that his information about the polling having not started upto 10 A.M. is based only on what Shri Keshri Mal had told him and on what some of the lady voters outside the polling station had told him. The witness did not bring the matter personally to the notice of the Returning Officer nor did he made any complaint to the Election Commission in the matter.

P.W. 10, Syed Mohammad Khan, Deputy Secretary of the local P.S.P. Organisation, states that he visited the polling station at Raoji Ki Haveli at 8-30 or 9 A.M. and found 400 to 500 women, most of whom were Hindus, waiting to cast their votes. The witness further states that after about one hour when he again visited the polling booth along with the P.S.P. candidate there were very few persons present and that Shri Keshrimal went into the polling booth and came out with a paper Ex. P. 1 which was shown to the witness and that thereafter the polling commenced. The witness does not speak of the presence of Shri Purshottam Mantri P.W. 5, although he says that it was in his presence that the P.S.P. candidate went in and brought the piece of paper Ex. P. 1 with him.

P.W. 18, Shri Prem Narain Joshi, Secretary of the local branch of the Hindu Maha Sabha stated that while he was on his way to the Raoji ki Haveli polling station, certain ladies, whom he met at about 10-30 A.M. and who were returning from that polling station were heard by him talking amongst themselves that the Congress Party is so managing the voting that only those voters who supported the Congress got a chance to cast their votes. This is obviously hearsay evidence.

P.W. 20, Shri Madanlal was the Hindu Sabha candidate at the bye election. He states that while he was at another polling station he received information about 10-30 A.M. that polling was not being started at Raoji ki Haveli and voters were returning from there. On proceeding to the Haveli he found Shri Keshrimal having an argument with the Presiding Officer, Shrimati Soori, who was telling Shri Keshrimal that she had not received instructions till then to start polling at the second polling booth in the Haveli and she gave a chit in writing to him in the witness's presence, which is Ex. P. 1. The witness says further that on his way to the Raoji ki Haveli he was told by ladies returning from there that they were not being permitted to cast their votes at that polling station on the alleged ground that their names were not included in the list for the area in that polling station and that those women who were voting for the Congress were being permitted to cast their votes at the Haveli. The witness says further that he himself noticed at the polling station that only those women voters who had slips with a pair of bullocks printed on them indicating that they were to vote for the Congress were being permitted to go in while those carrying slips issued by other parties were not being permitted and were being told that their names were not there in the voter's list and that in 10 to 12 cases which had been refused admission on these very grounds the witness himself pointed out their names and got them admitted. According to the witness a queue had been formed outside the polling station of only those voters who were carrying slips of the Congress Party while those carrying slips of the other parties had been turned away by the agents of the Respondent No. 1. The witness had not appointed any lady agent at the polling station and the male agents that he had appointed were not permitted to enter the polling station, which mistake the witness realised subsequently. The witness did not complain to any authority about this alleged irregularity but Shri Niranjan Verma on his behalf is said to have sent a telegram to the Election Commission, Delhi, by way of complaint.

P.W. 22, Shri Keshrimal Jain, who is the P.S.P. candidate says that, at one of the polling booths at the ladies polling station polling did not start till 1 P.M. although the schedule time was 8 A.M. and even the staff of that polling booth

was working on the other polling booth, that the ladies who went for casting their votes at the booth in question were told that their names were not on the list and had to return without casting their votes, their number being 500 to 600. The witness on receipt of news of these developments between 10 and 11 A.M. came to Raoji ki Haveli and complained to Mrs. Soori, the Presiding Officer, who told him that she had no instruction to start the other polling booth and gave a written reply Ex. P. 1 when the witness made a written complaint to her. According to the witness the ladies who had turned away from the booth in question never returned.

R.W. 2, Randheer Singh, who was the S.D.O., Sironj, and Returning Officer for the bye election, states that at the Polling station for ladies at Raoji ki Haveli in Sironj there were two polling booths between which there was a partition in the form of a barricade of bamboos. According to the witness what happened was that a very large number of female voters suddenly congregated at only one of the polling booths having a come there after cooking their meals and of those only those whose names were on the list of those two booths were able to cast their votes, there, but there was some difficulty in arranging for a number of women workers to sort out and separate the voters who were on the list of other booths. There was, however, initially no delay in starting the polling on any booth. No body complained to the witness that any Government officials were helping Shri Brij Sunder during the bye election nor did any such complaints come to his notice. In cross examination the witness explained that between 11 and 12 A.M. he was at some other polling station when he received the information that there was a lot of overcrowding at the ladies polling station. On going to the polling station he found overcrowding at one of the polling booths and himself sat down at the polling station and directed the voters to the respective booths for some time and left after regulating the polling for about half an hour. It was not brought to the witness's notice that any chit had been given by the Presiding Officer about the polling arrangements to any authority and he had no talk at all with the Presiding Officer about such a chit.

R.W. 14 Shri Ghan Shyam Das Bharadwaj, who was the Tehsildar, of Sironj during the bye election, had been appointed as Assistant Returning Officer. He states that on the polling day at about 7.30 A.M. or it might be later a bald headed fat person (probably meaning the P.S.P. candidate) came to him and reported that there was a crowd collected at the women's polling station located at the Raoji ki Haveli and that polling there was not proceeding smoothly. The witness immediately reached the spot and came to know that a considerable number of female voters pertaining to the other polling station located at the Customs Office had collected at the Raoji ki Haveli where they could not be permitted to cast their votes. The witness who had got the list for both the Polling stations checked the particulars regarding the voters present at the Haveli and sorted them out and directed those pertaining to the other polling station to proceed there. All this took about one hour and during all this time polling continued in respect of the women voters who were rightly present at the polling station. The witness himself got the female voters arranged in a queue and deputed an additional clerk to work at the polling station after appointing him as the polling officer. He denied that the commencement of the polling at any of the booths at Raoji ki Haveli had been delayed at all. According to him the aforesaid trouble that took place that took place there was only between 8 and 9 A.M. after which the polling proceeded quite smoothly. In cross-examination the witness stated that no official report about this confusion at Raoji ki Haveli was made since there was no interruption in the polling, that the total number of voters who had congregated at the Haveli due to this confusion was about 200 but the number was progressively reduced as the voters were being sorted out and that the women who had wrongly collected at the polling station were murmuring and complaining about their non-inclusion in the list and that the Presiding Officer had also complained to him that the voters who had wrongly collected there were refusing to return in spite of her pointing out to them that their names were not on the list of that polling booth.

The respondent himself has referred in detail to this episode in his evidence. He states that there was no delay in the commencement of the polling at any of the polling booths at Raoji ki Haveli but what really happened was that there were two polling stations each with two polling booths reserved for ladies one at Raoji ki Haveli and the other at the Customs Office, that some of the women voters pertaining to the polling Station at the Customs Office, instead of going to that polling station came to the polling station at Raoji ki Haveli and thronged at one of the polling booths there with the result that they had to return on finding that their names were not in the list maintained at that polling station and after they had been directed to proceed to the polling station at the customs

office. The respondent further explained, during cross examination, that confusion amongst the lady voters arose because in the ward known as the Maulana's ward, the dividing line for the voters pertaining to the two polling stations was a street at the right side of which were the voters pertaining to the Raoji ki Haveli while those on the left pertained to the polling station at the Customs Office and what happened was that some of the voters of the left side had gone to the Raoji ki Haveli instead of going to the Customs Office. He further stated in cross examination that there could not have been any complaint to the Presiding Officer about the delay in the commencement of the polling but there was a complaint by Shri Keshrimal about a change of a clerk from one polling booth to another in the Haveli and the witness came to know that Shri Keshrimal wanted this to be given in writing. When the witness visited Raoji ki Haveli the second time at about 10 A.M. he found two hundred to three hundred ladies collected at the haveli to cast their votes.

It has to be noted that although the women voters were the most material witnesses on this issue not a single such voter has been produced on behalf of the petitioner in support of the allegation nor has any husband or near relation of any female voter been produced to substantiate the charge. The document Ex. P. 1, which is said to have been handed over to Shri Keshrimal by the Presiding Officer Mrs. Soori in reply to the former's written complaint to her, does not contain any reference to the alleged delay in the commencement of the polling. It merely shows that one of the clerks of polling booth No. 2 had been deputed to polling booth No. 1 because there was lot of trouble at booth No. 2 and seems to support the respondent's version of the episode rather than that of the petitioner although the first reference to booth No. 2 seems to be a slip of pen in place of No. 1. The Returning Officer Shri Randheer Singh has stated that he received no complaint from any party as to the delay in commencement of polling and that there was actually no delay and the Assistant Returning Officer Shri Ghan Shyam Das P.W. 15 confirms that he had deputed one additional clerk at the polling booth in question due to the thronging of too many women at that polling booth, many of whom pertained to the polling station at the Customs Office. The explanation given by the respondent himself in his evidence regarding the confusion that prevailed at the polling station at Raoji ki Haveli for some time appears to be quite convincing. It is common ground between the parties that a large number of female voters had thronged at one of the polling booths at Raoji ki Haveli and that many of them had to return without casting their votes at that polling booth. The only difference in the two versions is as to the explanation for their return. The Returning Officer's explanation that the ladies came in large numbers at the wrong polling booth, after cooking their morning meals and that he himself sorted them out and regulated the polling for some time and then left, also appears to be quite convincing. Some corroboration of the respondent's version is to be found even in the evidence of P.W. 20 Madanlal wherein he says that while he was on his way to Raoji ki Haveli he was told by ladies returning from that polling station that they were not being permitted to cast their votes at that polling station on the alleged ground that their names were not included in the list for the area under that polling station. The witness has also admitted that he subsequently realised his mistake of not having appointed a female agent at that polling station as the respondent had done. All this goes to show that the confusion arising for some time at one of the polling booths at Raoji ki Haveli owing to voters not pertaining to that booth having congregated there and having had to return, has been taken advantage of and presented in a different light on behalf of the petitioner.

Quite apart from the absence of direct evidence on behalf of the petitioner in support of this issue and the unreliability of the evidence that has been generally produced a reference to the analysis of the figures of voting for the two polling booths at Raoji ki Haveli as revealed from form No. 16, which has been placed on record along with other records of the bye election received from the Returning Officer shows that at the two booths in the Girls School at Raoji ki Haveli the number of votes cast for the different candidates was as follows:—

	Shri Keshrimal	Shri B. S. Sharma	Shri Madanlal	Total
Booth No. 1	39	221	79	339
Booth No. 2	29	200	55	284

It will be seen that the total number of votes cast at polling booth No. 2 were 284 as against 339 in the other polling booth and assuming that the polling at booth No. 1 was normal the total number of votes at booth No. 2 was less only by 55 votes and the proportion of votes cast for the different candidates seems to be practically the same in booth No. 2 as in booth No. 1. These figures

also do not seem to support the plaintiff's allegation that any large number of female voters really pertaining to that booth had to return from polling booth No. 2 without casting their votes, there being no reason to suppose that the polling at booth No. 2 should have been higher than that at booth No. 1.

The result is that the petitioner has failed to substantiate the allegation contained in this issue and the finding on this point is in the negative

*Issue No 12(b)*

In view of the finding on Issue No. 12(a) issue No. 12(b) does not arise

*Issues No. 15 and 16*

These issues are connected with para 17 of the petition, which runs as follows:

"That the respondent No 1 has submitted a false account of election expenses and has deliberately withheld certain expenses which were unastonished. Some details are given in Schedule III and all other particulars shall be submitted at the time of trial. The expenditure of respondent No. 1 is much more than the prescribed one.'

Schedule III contained 4 items of which Nos. 2 and 3 were later given up and items No. 1 and 4 only were pressed which have been incorporated in issues No. 15 and 16. Item No. 1 is to the effect that in the respondent's return of election expenses no expenditure has been shown about the food charges of the workers numbering about 400 who were fed by respondent No 1 by starting "community traditions" at a number of places? Item 4 is to the effect that no travelling allowances for the wife of respondent No. 1 and other workers who went from distant places to work for respondent No. 1 have been shown in the return. In his statement under 0.10 r. 1 the petitioner corrected para 17 of the petition by saying that the word "unastonished" should be read as "unwarranted" and that the word "traditions" used in item 1 of Sch. III should be read as "Kitchens". In regard to issue No. 4 of Schedule III he stated that the word "allowances" used therein should be read as "expenses". In that statement he also gave names of the respondent's alleged workers numbering eleven apart from his wife who went from distant places to work as his agents and whose travelling expenses have not been shown in the return of election expenses. He promised to file a further list of other workers who are in very large numbers but such a supplementary list does not appear to have been filed.

It may be stated here that the return of election expenses filed by the respondent of which a certified copy has been placed on the record by the petitioner shows a total expenditure of Rs. 4126/9/- but does not include any item of expenditure relating to the fooding or travelling expenses of his workers. In his written statement the respondent No. 1 denied the truth of the allegations contained in para 17 and asserted that the account of election expenses was correctly submitted and was within the prescribed limit and that no expenditure was withheld, from the return. In regard to Sch. III it was stated by the respondent that the particulars given in items No. 1 and 4 are vague and did not furnish the details as required under the law particularly the names of the workers and the dates when they were fed. It was, however, denied that the respondent paid the fooding charges of the workers. A similar objection was taken as to the particulars given in item 4 of Sch. III and in regard to his wife the respondent stated that she had gone to look after him and her visit had no connection with the election. It was contended that in view of its vagueness and absence of particulars the schedule cannot be taken into consideration.

Under Section 99 of the Act, where a charge as to the commission of any corrupt practice at the election is made in the petition it is obligatory on the Tribunal to record a finding whether any corrupt practice has been committed at the election by or with the connivance of the candidate or his agent and to record the names of any persons who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice. Since a charge of a major corrupt practice has been made against the respondent in para 17 of the present petition this Tribunal is bound to record a finding on the issues arising from the charge.

Most of the petitioner's witnesses have given evidence on these issues while, on behalf of the respondent RWs. 5, 9, 10, 11, 15, 16 17, 18 and the respondent himself have given evidence in rebuttal.



P W 2 Bhagwatidevi of Tonk, a member of the PSP who was at Sironj during the bye-election for 6 days, states that 200 to 250 workers were working at the Congress Office at Sironj located in the main market who belonged to various places including Ramganj Mand Kotah, Jhalawar, Lateri, Bundi, Baan, Jaipur and Bharatpur and that they were fed at a mess. She could, however name only Shri Lal Behari M.L.A. of Baan Shri Tarang M.L.A. of Jhalawar and Shri Ina Dutt Swadheen of Kotah amongst male workers and Shrimati Shankuntala Shaida of Jaipur and Mrs Brij Sunder amongst lady workers out of the 8 or 10 lady workers that were alleged to have been working for the Congress. In cross examination she stated that she was not in a position to say whether the food or the rations that were received for cooking in the mess were supplied free or on payment. Shri Mukti Lal Modi, M.L.A., who has left the Congress, states that he went to Sironj during the bye-election about a fortnight before the polling day and during the single night that he remained there he remained standing for some time in front of the Congress Office where he found about 30 workers some of whom were inside the office and others outside. He could name only one Shri Indra Dutt Swadheen of Kotah but added that some of the workers were from Kotah and some from Sironj. He did not refer in his evidence to any mess or feeding arrangements of workers. P W 4 Shri Nemichand Jain of Indragarh who is a member of the Pradesh Congress Committee, states that on the 12th November 1953, (i.e. 3 days before the polling day) he went to Lateri in Sironj Sub-Division in connection with the bye election and that he took his evening meals along with Shri Keshrimal Gangwal of Bundi and Shri Soharsingh of Kapraal at a mess which was managed by Shri Bhairon Prakash and arranged by the Congress Party for feeding its workers. The witness also visited Sironj on the 16th November i.e. the day following the polling day and found about 100 to 150 workers present on that day who had been fed at a mess being run by the Congress Party where two or 3 cooks were employed. The witness further stated that the counting of votes at Sironj took place on the 17th of November and that 20 to 25 persons took their meals at the sitting during which the witness took his meals and others were also coming for their meals. He could not say who was managing or financing the mess but it was being run on behalf of the Congress Party at Sironj. The witness denied in cross examination that there were two separate groups in the Congress Party in Kotah, one headed by the petitioner and the other to which the respondent belonged but admitted that there are at present two groups within the party at Kotah.

P W 3 Shri Purshottam Das Provincial Secretary of the PSP who remained at Sironj from 8th to the 15th of November, states that the office of the Congress Party at Sironj during the bye election was located in a building belonging either to Seth Keshri Singhji or some Bohra and that there should have been about 300 to 400 Congress workers present at Sironj some of whom were known to him and all of whom so far as he could recollect were being fed at one mess which was being run in one of the Havelies of Seth Keshri Singh and was once visited by the witness. The entire feeding at the mess was financed by Shri Brij Sunder. He could name only Dr Shanti Swaroop Datta of Alwar Shri Lal Behari M.L.A. of Baan, Shri Chopra and Shri Brijam Singh contractor of Kotah as the workers from outside whom he saw at Sironj. But according to him, there were workers from Jaipur Bharatpur Kotah Jhalawar Bundi, Lateri, Hindoli, Baan, Chhipabarod Chhabra. He further stated that he was once invited by some Congress friends to dine at the mess because 'Mukti and Puri' was to be served that day but did not take his meals. He however saw 80 to 90 persons taking their meals on that occasion. According to the witness's information based on what he learnt from Shri Sardarmal a Congress worker and from a Munshi of the respondent belonging to Budin, the rations were purchased through Shri Sardarmal, and the money used to be paid by the respondent's Munshi.

P W 6 Shri Kundanlal Chopra of Kotah who is the Vice President of the Lalpura Tehsil Congress Committee, states that he went to Sironj at the request of the Kotah District Congress Committee, 25 days before the polling day and remained there upto the polling day that there were 60 to 70 Congress workers present at Sironj during the bye-election and they were running a mess at Sironj "as a general undertaking". Some of the workers cooked the meals during their free time aided by one permanent cook who occasionally absented himself. The witness could not say who financed the meals but he himself was paid Rs 10/- by Shri Rameshwar Dayal, General Secretary of the District Congress Committee, for the journey from Kotah to Sironj and Rs 10/- for the return journey. He denied having invited Shri Purshottam Das P W 5 to dine at the mess.

P.W. 7 Shri Laxmi Narain Azad stated that he was deputed to Sironj by the District Congress Committee, Kotah to canvass support for the respondent and, on the 10th or 11th November he reached Sironj from where he was deputed on the following day to Bagdoda for canvassing. He was paid in all Rs. 20/- by Shri Rameshwar Dayal, Secretary of the District Committee for the journey to and from Sironj and Rs. 25/- in addition, to meet his food expenses, but made his own cooking arrangement at Bagdoda. During his stay at Sironj, however, he took his meals at the general mess which had been arranged for the workers and saw 10 to 15 people taking their meals in the mess at the time he himself took his meals but could not say who arranged the mess. In cross examination he stated that a vakil of Kishori Patan in Bundi District was in charge of the general mess at Sironj that there was one cook who used to cook the food while the workers also used to help him in cooking and mess arrangements.

P.W. 8, Shri Rameshwar Dayal, General Secretary of the District Congress Committee, Kotah, at the time of the bye election at Sironj and now, President of the District Congress Committee states that while there is no record of Congress workers that went to Sironj in order to work for the Congress candidate a formal appeal had been made to all Congress men to help the Congress candidate at the bye election after the Congress ticket had been given to him and that a number of workers including the witness Shri Dhariwal, Shri Beni Madhav and Shri Vaidya Krishna Gopal had gone together to Sironj a day or two before the polling day within the witness' knowledge. The witness could not find any record of the expenses, if any, paid to workers who went to Sironj in order to work for the Congress candidate nor any entries in the cash book in regard to such expenses, nor was he aware whether financial help was given by the Congress Committee to Shri Bij Sunder Sharma at the bye election. He further states that if any financial help had been given to the Congress candidates in the bye election there should either have been a separate account in the Congress Office in regard to that expenditure or entries in that behalf in the general cash book of the Committee. But he could not find any such separate account or entries in the cash book. Subsequently the witness produced the account books and after they had been inspected by the petitioner's advocate no proof of any entries was sought by the petitioner. The witness bore his own expenditure of the journey and he and Shri Umced Mal took their food with a relation of the latter at Sironj. The witness noticed 3 or 4 other Congress workers from outside. The witness contradicted P.W. 6 Shri Kundanlal Chopra and P.W. 13 Shri Laxmi Narain Azad by saying that he never paid any amounts to them in connection with the Sironj bye-election.

P.W. 10, Sayed Mohammad Khan, Deputy Secretary of the P.S.P. stated that 400 to 500 Congress Workers were present at Sironj on the polling day some of whom were local and others were from outside and Shri Bij Sunder had made arrangements for the messing of workers at 3 or 4 different places at his own cost. The witness did not know from whom rations were purchased for the mess but there were two or three grocery shops. The witness also stated that there were two cooks from Sironj working at the general mess run by the Congress candidate and there were also some cooks from Kotah.

P.W. 11 Master Bhola Nath, Ex-Minister, Rajasthan Government stated that he visited Sironj on an official business about a month before the polling day and found workers from Bharatpur, Kotah and other places working there of whom 10 to 20 met him. But he could not give their names. He also visited Lateri on official work.

P.W. 12 Shri Yusuf Qureshi of Bhopal who calls himself a newspaper correspondent visited Sironj during the bye election for supporting the P.S.P. candidate and found 250 to 300 Congress workers whose messing arrangements had been made by the respondent at two or three places. P.W. 13, Shri Kanwarlal Jelja, a Congress M.L.A. of Rajasthan, states that he was deputed by the respondent to work for him at Lateri where Shri Bahiron Prakash was in charge of the Congress office accompanied by four persons. P.W. 15 Shri Ghan Shyam Saran Bhargava says that no less than 600 Congress workers were working in the whole of the Constituency for the Congress candidate during the bye election of whom about half must have been from outside. According to the witness mess arrangements for about 20 days for the Congress Party workers were made at Sironj at the house of Shri Kishan Bhargava, pleader "Pandit" having been in charge of the general mess arrangements under the general supervision of Shri Swadheen, Shri Daulatram and the respondent himself. The witness could not say from where the rations for the mess were supplied but "Panditji" used to pay money to a servant named Maula Kachhi for purchasing vegetables. The "Panditji" according to the witness was not a resident of Sironj.

P.W. 15 Shri Rajmal Brahim of Sironj states that during the bye-election a mess was being run by Shri Brij Sunder respondent in which he worked as a cook on a payment of Rs. 2 per day. 10 to 30 persons, according to the witness used to take meals in that mess and the number went on increasing having gone upto about 100 on the polling day. The mess was originally located in the house of Shri Daulat Rai but later it was shifted to the house of Shri Shri Krianna. Originally he was the only cook but, as the number of persons taking food in the mess increased other cooks were engaged. On the polling day, according to the witness one Sahgram, a lady and two boys, whose names were not known to the witness, also worked as cooks on a monthly basis of payment. Any of the cooks of the mess including the witness used to tell the requirements of the mess to Shri Brij Sunder who was staying at the house of Mulla Akbar Ali and the respondent himself managed to send the rations, which were not supplied from any particular shop. In the absence of Shri Brij Sunder one Swadheenji used to manage the supply of rations at the mess.

P.W. 16 Shri Prem Naram Joshi, states that 400 to 500 workers from outside worked for Shri Brij Sunder during the bye-election and a mess to feed the workers at Sironj was run at the house of Shri Shri Krishna Vakil, which is situated just opposite the witness's house. P.W. 18 Shri Jaxmi Narayan, the President of the Chhabra Tehsil Congress Committee in Kotah, who had been deputed by the President of the Kotah District Congress Committee to work at Sironj in support of the Congress candidate. Having reached Sironj on the 12th he was deputed on the 13th to Semal Khori as a polling agent of Shri Brij Sunder. The witness found about 50 persons sitting at the Congress Office at Sironj when he reached there but could recognise only 10 to 12 persons of his district. The witness had his meals at Sironj in the Kothi of Muneemji of Ajmerwala along with Shri Dhariwal but could not say what arrangements were made for the feeding of other workers.

P.W. 19 Shri Santosh Kumar, who is also a member of the Praja Socialist Party and who was running a tea hall at Sironj during the bye-election, states that he entered into a contract with the respondent for supplying ready made tea to the Congress Election Office, which was to be supplied by the orders of either Shri Swadheenji or Shri Daulat Rai in the form of chits. According to this witness 250 to 300 workers from outside were working for the Congress candidate during the bye-election. He states that he supplied tea according to the contract during a period of over a month, the number of cups in the beginning being from 10 to 15 but it went on increasing until it reached the maximum of about 100 cups. The tea used to be supplied to the Congress workers, and the witness received a payment of over Rs. 400 in all for the supply of tea in several instalments after intervals of 8 to 10 days on the basis of chits received by him. P.W. 20 Shri Madanlal also stated that 500 to 600 Congress workers of whom 200 to 250 were local workers, worked for the Congress candidate during the bye-election while on the polling day the number of workers at Sironj proper was about 200, and there was a concentration of Congress workers at Lateri, Anandpur Tal, Deepna, Khera, Damori and Ama Dhana. A regular mess located at the Haveli of Ajmerwalas had been arranged at Sironj by Shri Brij Sunder for feeding the Congress workers which was under the general charge of Shri Kishan Bhargava who lives in the same Haveli while the cook was one Rajulal Brahmin. In cross-examination the witness stated that he had himself seen the respondent's man purchasing rations on 10 to 15 occasions from certain shops at Sironj namely from those of Jagannath Prasad and Jama Prasad Chorasias who were not supporting any particular party, but he could not say whether these shopkeepers kept any regular accounts or supplied anything on credit. He had himself seen rations being supplied from these shops to the respondent's man through chits. One of the persons whom the witness remembered having seen purchasing rations from the mess is Salig Ram of Sironj also known as Bachhu Maharaj. P.W. 21 Shri Kok Singh, a member of the P.S.P. says that a Dhaba was run in the house of Shri Shri Kishan advocate, which started working 2 to 3 days before the polling and closed on the day after the polling and that the persons working for the Congress candidate used to take their food at that Dhaba of whom the number used to be 100 to 150 daily. The witness saw only one cook Rajmal working at the mess and a servant named Mathurva doing the menial job. The witness used to sell fruits as a pedlar at a distance of about 2 houses from the house of Shri Shri Kishan Bhargava where the Dhaba was being run.

P.W. 22 Shri Keshrimal, the Praja Socialist Party candidate, states that a general mess located at the house of Shri Shri Kishan Vakil had been opened at Sironj for feeding the Congress workers and a Dhaba had also been opened at Lateri of which the entire expenses were borne by Shri Brij Sunder Sharma.

respondent According to the witness the Dhabas were run for about a month or so. He further stated that out of the Congress workers who came from outside 60 to 70 were from Sironj while the rest were distributed in the mofussil and all the workers from outside used to be fed at the Dhaba at Sironj.

Of the witnesses produced on behalf of respondent, R.W. 4 Maulana Abdul Rahman, Chairman Municipal Board, Sironj and President of the Local Jamiat-ul-Ulema states that 20 to 25 Congress workers from outside visited Sironj during the bye-election including Shrimati Brij Sunder to canvass support for the Congress candidate but all the workers did not stay at Sironj throughout but used to visit and return. R.W. 5 Shri Bahadur Mal, who is the Muneem of the shop at Sironj of Seth Keshri Singh Budhsingh Bapna of Kotan, known as Sanuwas-e-Ratlam states that he was in Sironj during the bye-election, that Shri Rikhab Chand Dhariwal, Shri Umeed Mal Mahatta, accompanied by two other workers stayed at the Haveli of Sabuwan-e-Ratlam at Sironj during the bye-election and that the witness personally bore the expenses of their stay during the period since Shri Dhariwal is the first cousin of Sethji and Shri Mahatta is the witness's brother-in-law. The witness denies that any other Congress workers stayed at the Haveli or that the arrangement for the messing of Congress workers other than these four were made at the Haveli.

R.W. 7 Akbar Mohammad has already stated in cross-examination that 25 to 30 workers came to Sironj from outside to work for Shri Brij Sunder during the bye-election, that they used to take their meals at different places according to their convenience and that there was no common mess run at one place for all of them.

R.W. 9 Shri Motilal, a local businessman, who was the Congress candidate at the general elections from the Sironj Constituency, says that there could not have been more than 20 Congress workers from outside working at Sironj proper during the bye-election. R.W. 10 Daulat Rai, President of the Tehsil Congress Committee also stated that 20 to 25 Congress workers from outside came to Sironj to work for the Congress candidate during the bye-election, that there were no separate messing arrangements at any single place for these workers, the workers having stayed in batches with different local workers who acted as their hosts. The witness further stated that some workers sometimes took their meals with him during the period and some others took their meals with Shri Sri Kishan Vakil but there was no regular mess being run for the purpose at either place and the expenses of feeding of these workers were met respectively by the witness and by Shri Sri Kishan. The number of persons that took their meals with the witness varied from 2 to 4 and Shri Santosh Kuma, who was running a tea stall, used to serve tea at the witness's expenses to such of the Congress workers as were the latter's guests no tea having been served to any Congress workers in the Congress Office. He denied that any expenses of feeding of Congress workers from outside were borne by Shri Brij Sunder. According to the witness local Congress workers had met before the workers from outside arrived and had decided that they should individually play host to them in accordance with the capacity of each member. In regard to prominent Congress leaders who came from outside the witness stated that they came at their own expense and either stayed for a few hours or for the night as guests of local Congressmen and went away after addressing election meetings. R.W. 15 Shri Ranglal of Bundi stated in cross-examination that while he was on a visit to Sironj during the bye-election he was accompanied by four Congress workers including Shri Bhairon Prakash that he remained at Sironj for two to three days while other workers went to different places, that they did not take their meals at a single place during their stay at Sironj, that the total number of Congress workers who had collected at Sironj while he was there was 20 to 25 and when he went outside of Sironj to different places he took his meals there also with different Congress workers.

R.W. 16 Shri Sri Kishan, Legal Practitioner of Sironj, denies that he ran any mess anywhere at Sironj on behalf of the Congress Committee or his party and stated that to his knowledge no such mess for the Congress workers was run during the period. He denied that Shri Rajmal Brahmin of Sironj who is a cook by profession, was engaged by him or by the Congress Party during the bye-election. He was summoned as a witness by Shri Abnara Hari along with a register of an alleged mess and on his informing the petitioner that he had no such mess register he was asked not to attend the court. According to the witness, 25 to 40 Congress workers from outside were at Sironj working in support of the Congress Committee but he could not say where these workers used to take their meals. R.W. 17 Shri Rikhab Chand Dhariwal, who was the President of the Kotah District Congress Committee during the bye-election stated that he twice visited Sironj during the bye-election to canvass support

for the respondent and on these occasions he stayed at the house of his maternal uncle, Seth Keshri Singh, that Shri Rameshwar Dayal, Shri Umed Mal Mahatta, Shri Beni Madhav and Vaidhya Krishan Gopal accompanied the witness during the visit and stayed and dined at Sethji's house along with him. He denied that any mess was run at Sironj on behalf of the Congress Party's candidate during the bye-election. In cross-examination the witness named 14 to 15 workers from outside who also visited Sironj during the period but could not say where these persons took their food during their stay at Sironj. R W 18 Shri Bhairon Prakash in charge of propaganda for the Congress candidate in Lateri Tehsil denies that he managed any mess at Lateri for that purpose. At Lateri the witness was fed by Congress supporters and when he came to Sironj he dined with Shri Shri Kishan pleader who was his class-fellow. The respondent in his evidence states that no community kitchens were started by him on his behalf either at Sironj or elsewhere to feed Congress workers, the people of Sironj being very hospitable and that he did not bear any expenditure of any of his workers during the election campaign at Sironj which he has not shown in his election return. According to the respondent the total number of workers of the Congress Party for the whole of Sironj constituency could not have been between 400 even inclusive of the local workers. In cross-examination he stated that he was unable to give the exact number of his workers from Kotah Bundi or Baran but roughly speaking there were two to five from Kotah, five from Bundi, one or two each from Alwar and Bharatpur and he could not say how many outside workers were working for him at Sironj on the polling day as he did not keep any records of such workers. In regard to Shri Laxmi Narain Azad Kanwarial Jeha, a local Behar. M.L.A. and Sri Nem Chand of Kotah, he stated that he came to Sironj on the day of the bye-election in the presence at Sironj, while he did not see Shri Kundanlal Chopra. He was not aware what arrangements used to be made for feeding Congress workers who came from outside and they might have made their own arrangements. He himself used to have his meals elsewhere and did not make any private arrangements for himself. He also denied that any of the workers were paid the expenses for their journey to and from Sironj either by him or anybody else on his behalf or to his knowledge. He used to maintain regular accounts of the expenses incurred in connection with the election campaign in a note-book and also the original vouchers and that the note-book might be still with him or might have been destroyed after the filing of the return.

I have quoted the evidence of the witnesses on this issue in extenso because of the importance that is attached to the issue by the parties. It will be seen from the above narrative that the respondent's witnesses have generally stated that more than 20 to 25 Congress workers from outside visited Sironj during the bye-election in order to canvass support for him. The number of Congress workers given by the petitioner's witnesses has varied from 250 to 600 and, according to some of the witnesses about half of them were from outside. When asked to give specific names however, the number of such names given by the petitioner's witnesses as a whole does not exceed 25 including those workers who have themselves come into the witness box and, even in the cross-examination of the respondent's witnesses, not more than 20 to 25 names of outside workers could be elicited. Charges of corrupt practice, according to settled law, have to be judged by the standards of a criminal case. The vague and general statements of the petitioner's witnesses as to the number of outside Congress workers at Sironj and other places cannot be accepted except to the extent of about 25 whose names have been elicited in examination or cross-examination. In regard to the feeding of these Congress workers, the respondent's evidence is generally to the effect that they stayed in batches with different local workers at Sironj who played the hosts for such batches, and that no general mess was run anywhere for feeding these workers. Shri Bahadurmal Muncern of Sahuwari-e-Ratlam at Sironj has given the names of two prominent Congress workers who, owing to their relations with him or with Sethji stayed as his guests at the Haveli of the Sahuwari and this may be true. But there is positive evidence given on the petitioner's behalf by certain prominent Congress workers and some independent witnesses as to the running of a general mess at Sironj for feeding the Congress workers, which there is no reason to disbelieve and which the respondent has not been successful in rebutting. Apart from the workers from outside that are provided to have been working for the respondent in the constituency, it also appears that there was a Congress Office of considerable size being run at Sironj during the bye-election and it is natural that local Congress workers of the Constituency should have been coming to and going from Sironj reporting the progress of the work and taking instructions and the number of these workers collecting every day and staying at Sironj for howsoever short a time, as the polling day was approaching, must have been considered and according to all accounts naturally there was

a concentration of workers on the polling day at Sironj. Even if the number of workers from the outside Sironj sub-division was not higher than 25 to 30 the number of local workers of the sub-division coming to and going from the Congress office every day and having to stay at Sironj appears to have run to at least one hundred near about the polling day as I shall presently show from the evidence of two or three reliable witnesses and these naturally had to be fed during their stay at Sironj whether at a common mess at the respondent's expense or otherwise. On this point one of the most important and reliable witness appears to be P.W. 15 Rajmal who does not seem to belong to any party who has stated that he was working as a cook at Rs. 2 per day in a mess which was run by the respondent at which 10 to 30 persons used to take their meals, the number having risen to about 100 at the time of polling. According to the witness, 3 more cooks had to be employed at the mess on the polling day. He states having himself been telling the requirements of the mess to the respondent or to Swadheenji who used to manage the supply of rations to the mess. The witness does not appear to have indulged in exaggerated accounts like other witnesses of the petitioner and remained unshaken in cross-examination. His evidence that the mess was originally located in the house of Shri Daulat Rai and was later shifted to Shri Shri Kishan Vakil finds indirect support from the evidence of R.W. 10 Daulat Rai himself, who has made a halting admission that some workers sometimes used to take their meals with him while others took their meals with Shri Shri Kishan Vakil. R.W. 16 Shri Shri Kishan while denying that any general mess for feeding Congress workers was run by him during the bye-election did not deny specifically that the mess was run at his house, as is the general evidence of petitioner's witnesses. It is also in the evidence of P.W. 21, Shri Kok Singh that a Dhaba was run in the house of Shri Shri Kishan Vakil although he says that it started working only two to three days before the polling day and closed on the day following the polling. According to him 100 to 150 persons used to take their food in this "Dhaba" and he also states that he saw Rajmal cook working at the Dhaba and one servant Maturwa. His evidence, therefore, substantially corroborates that of P.W. 15, Rajmal cook in regard to the number of persons being fed at the mess on or about the polling day. There is another very important witness whose evidence in regard to the number of congress workers being fed at the general mess corroborates that of Rajmal. He is P.W. 4 Shri Nemichand Jain, who is a member of the Rajasthan Pradesh Congress Committee and whose having been an agent of the respondent at Lateri was not specifically denied by the respondent in his evidence nor was he cross-examined on this point. He states having arrived at Sironj on the 16th November i.e. on the day following the polling and even then he found 100 to 150 workers taking their meals at a general mess run by the Congress Party at which two or three cooks were employed, and even at the sitting at which he took his meals he saw 20 to 25 persons also sitting and others waiting for their meals. It may be presumed that the number fed on the polling day and before it was even higher. In cross-examination the witness avoided directly answering the question as to who was managing or financing the mess although he admitted that it was being run on behalf of the Congress party. Then again P.W. 15 Shri Kundanlal Chopra, Vice-President of the Ladpura Tehsil Congress Committee who, having been deputed by the Kotah District Congress Committee remained at Sironj for 25 days upto the polling day, also says that there were 60 to 70 Congress workers at Sironj and that they were running a general mess "as a joint undertaking", cooking their own food with the aid of a permanent cook, who occasionally absented himself but he also could not say who financed the mess. This is significant evidence which while contradicting the respondent's version that no general mess was run for Congress workers corroborates Rajmal's evidence at least partially. Shri Lakshmi Narain Azad, another Congress worker deputed by the Kotah District Congress Committee also states that he remained at Sironj on the 11th and 12th November on his way to Bagroda for propaganda work and took his meals at Sironj in a general mess; arranged for workers at which 10 to 15 persons took their meals at the time he took his meals. This does not rule out other rounds and this witness also could not say who arranged the mess. He also says that there was one permanent cook while the workers also helped in the cooking.

As to the location of the mess P.W. 16 Shri Prem Narain Joshi, Secretary of the Local Hindu Mahasabha whose house is said to be just opposite to that of Shri Shri Kishan Vakil, says that it was located in that Vakil's house. P.W. 5 Shri Purshottam Mantri, Provincial Secretary of the P.S.P. says that the general mess for Congress workers was housed in one of the Havelies of Seth Keshrisinghji. Shri Madanlal P.W. 20, the Hindu Sabha candidate has stated that the regular mess at Sironj was located in the "Haveli of Ajmerwalas" in which Shri Kishan Vakil himself lives. Shri Keshri Mal P.S.P. candidate's

evidence is also to the effect that the "dhaba" was located in Shri Kishan Vakil's house. There is, therefore, general corroboration of Rajmal's evidence that the general mess for Congress workers was located at Shri Kishan Vakil's house.

As to who financed the mess there is no direct evidence other than that of Rajmal. The evidence of Santosh Kumar as to the supply of tea to Congress workers at the expense of the respondent is really in support of an allegation which was not contained in any of the particulars supplied by the petitioner along with the petition or even in his statement under 0.10 r.l. A tea stall is not a community kitchen and evidence of the witness on that point is really not on the issue at all and hence cannot be considered except as affording an indirect indication of the number of Congress workers at Sironj. The evidence of other witnesses of the petitioner as to who financed the general mess is naturally hearsay since none of them could have had access to the accounts of the respondent or of the mess. Even the evidence of Shri Purshottam Mantri P.W. 5 as to what the Munshi of the respondent is alleged to have told him about the accounts of the mess is mere hearsay. But the running of a general mess at Sironj for Congress workers having been established it was for the respondent to satisfy the Tribunal as to who financed it. If it was run on the voluntary contributions of Congress workers, which is very unlikely and of which there is no evidence whatsoever, it was for the respondent to have said so. On the contrary, he has denied the very existence of such a mess. In the circumstances it is a natural inference that the respondent himself was financing the mess and since it was a material item of expenditure its omission from the return of expenses is a serious matter.

"The making of any return of election expenses which is false in any material particular" amounts to a minor corrupt practice u/s 124(4) of the Representation of the People Act. It is settled law that the word "false" indicates "deliberately incorrect" or in other words a corrupt motive must be shown. The notice may be to omit legitimate expenses from the return where a maximum has been fixed or the intention may be to conceal expenditure or other details which would go to prove the commission of some corrupt practice. In support of this I may refer to the case of Mohammad Zakaria Kitchlew vs. Sheikh Mohd Sadiq (Sen and Poddar, Indian Election cases at page 34). The same meaning was adopted in cases referred in the same book at pages 275, 374 and 1,000 and in 3 E.L.R. 197 in which it was held that expenses of entertainment by an agent must be included in the return as having been incurred in the conduct of an election.

The next question is whether, as alleged in para 17 of the petition, the expenditure incurred by the respondent in the bye-election had exceeded the prescribed limit. On that point there is no specific evidence and facts or figures in regard to this point were not even discussed, in the course of arguments. Rule 117 of the Conduct of Election Rules, 1951, framed under the Representation of People Act lays down that no expenditure shall be incurred or authorised by a candidate or his election agent on account of or in respect of the conduct and management of an election in any one constituency in a state in excess of the maximum amount specified in respect of that constituency in Schedule V. Schedule V lays down a maximum of Rs. 6,000 for a single member assembly constituency. U/s 123(7) the incurring or authorising by a candidate or his agent of expenditure in contravention of any rule made under the Act amounts to a major corrupt practice, so that if the respondent's expenditure in the bye-election exceeded the prescribed maximum of Rs. 6,000 it would amount to a major corrupt practice. As already stated the total expenditure of Rs. 4,125/1/0 shown in the return is much below the prescribed maximum. But what would have been the total figure in case the expenses of feeding of workers had been added, it is not possible to say definitely on the present material. Many of the petitioner's witnesses, as already pointed out, have given what looked like extremely exaggerated figures as to the number of workers that were being fed and even that part of the petitioner's evidence which can be relied on to a certain extent as discussed above, is not definite or consistent as to the number of days during which the general mess was run and the exact number of workers that was fed on each day and no one has even suggested what could have been the average cost per day of the feeding of each worker in the mess or the quality of feed that was supplied. As to the purchase of rations for the mess only Shri Madanlal P.W. 20 has named two shopkeepers Jagannath Prasad and Janna Prasad Chorasias from whose shops rations for the mess used to be purchased, according to the witness. These shopkeepers have been produced by the petitioner to prove the quantity of rations supplied although they are said to be independent men, who did not support any particular party during the bye-election. While, therefore, there is no sufficient material for a definite finding that the prescribed limit of expenditure had been actually exceeded, there

can be no doubt that by filing a false return in a material particular the respondent has committed a minor corrupt practice as defined in Section 124(4). In this connection the omission on the part of the respondent to produce his accounts, although he states that he had been keeping regular accounts and although rule 111 of the election rules read with Section 44 of the Act also requires the maintaining of regular accounts of election expenses, is quite significant and must lead to an inference against the respondent. In *Mohammad Zakaria Kitchlew vs Sheikh Mohd Sadiq* already cited above, a presumption that either the respondent did not keep accounts at all and put in imaginary accounts or that the accounts had been withheld so that any corrupt practice committed may not be known to the court, was drawn from the fact that the respondent had not cared to produce accounts. Such a presumption in the present case would be sufficient for a finding that the return is false at least as to the expenditure incurred on the running of the general mess at Sironj.

As to the running of a general kitchen or a general mess at places other than Sironj, the only place about which there is some positive evidence is Lateri. As to other places the matter was not even pressed during arguments. PW 4 Shri Nemichand Jain of the Pradesh Congress Committee has stated that while going to Village Muraria under the instructions of Shri Bhairon Prakash, a Congress worker at Lateri, he along with Shri. Keshrimal Gangwal of Bundi took his evening meals in the mess there which was managed by Shri Bhairon Prakash and arranged by the Congress party for feeding its workers. In regard to this mess also he said that he was not aware who supplied the rations for the meals and who kept the accounts. Shri Bhairon Prakash himself has come into the witness box as RW 16 and has denied that any mess was run at Lateri for feeding Congress workers. But he has been a junior of the respondent and his denial is not convincing. There seems to be no reason to disbelieve the evidence of Shri Nemichand Jain, who is a prominent Congress worker. There is no material, however, to enable me to give a finding as to how many workers were fed at Lateri.

The finding on issue No 15(a) and Issue No 16(a) which are inter connected is, therefore, to the effect that a considerable number of Congress workers were fed at a general mess at Sironj on which the number rose to at least 100 on the polling day and that there was also a much smaller mess for feeding the Congress workers at Lateri of which the number could not be determined. The expenses of such feeding of Congress workers at the two places should have been included in the return of election expenses filed by the respondent.

#### *Issue No 15(b)*

The finding on issue No 15(b) is that the respondent's omission to show the expenses of the messes at Sironj and Lateri in his return of election expenses to the submission of a false return in a material particular within the meaning of Section 124(4) of the representation of Peoples Act. Obviously however it cannot have any effect on the result of the election since it is not proved that the prescribed maximum for election expenditure was actually exceeded and the respondent's election was brought about through such unauthorised expenditure. The mere filing of a false return after the result of the election has been already declared cannot be said to have any effect on the result. I may add that, in spite of the Proviso to Section 99 of the Act it was not considered necessary to issue a fresh notice to the respondent before naming him as having committed a corrupt practice u/s 124(4), in view of the Supreme Court decision in AIR 1955 SC 756 and 830 to the effect that no fresh notice under the proviso need be given to a party to the election petition in respect of the very charges which are the subject of the enquiry therein and as to which he already had notice.

#### *Issue No 16(b)*

The only evidence as to the alleged payment of travelling expenses of Congress workers, produced on behalf of the petitioner is that of PW 6 Shri Kundanraj Chopra and PW 7 Shri Lakshmi Narain Azad. PW 6 Shri Kundan Raj of Kotah says that he went to Sironj at the request of the Kotah District Congress Committee and that for the expenses of his onward journey to Sironj he was paid Rs 10 and the same amount was paid to him for the return journey. PW 7 Shri Lakshmi Narain Azad of Kotah says that he also was paid the same amounts for his onward and return journeys by the District Congress Committee and an additional amount of Rs 25 to meet the expenses of his diet. PW 8 Shri Rameshwar Dayal who was then Secretary of the District Congress Committee, Kotah has stated that there is no record in the account books of the Congress Committee of any payments having been made to any Congress workers and the cash book of the District Congress Committee which he actually produced



was found not to contain any entry in regard to such payments. He denied that he had made any such payments to Shri Kundan Lal Chopra and Shri Lakshmi Narain Azad in connection with the bye-election as alleged by them. While it is difficult to disbelieve the evidence of the two witnesses as to the payments allegedly made to them from the funds of the District Congress Committee, it has to be borne in mind that, in the first place, the evidence is different from the allegation as embodied in the issue namely that the travelling allowance were paid by the respondent to his workers and secondly none of these witnesses were asked as to whether they had informed the respondent of the receipt of such payments from the District Congress Committee. Had the evidence been to that effect the question would have arisen whether the respondent was bound to show the amounts allegedly paid to these two workers as receipts by himself and then as payments on his own behalf to these workers on the expenditure side. The point was not even argued in that light. It may be noted here that in his return of election expenses under the head receipts' he has shown an item of Rs. 4,500 as having been drawn from self and two items of Rs. 60 and Rs. 50 each as receipts from the Pradesh Congress Committee for getting printed, a biography of the candidate in the form of a leaflet. No other item is shown as having been received from the Pradesh Congress Committee. In the circumstances of the case even assuming the evidence of P.W. 6 and P.W. 7 to be correct it cannot be held that the respondent was bound to show these payments in his return of election expenses.

Another point raised in the pleadings and indirectly in the evidence is that the respondent's wife visited Sironj to work in support of the respondent. Evidence has actually been adduced on behalf of the petitioner to prove that he even worked as the polling agent of the respondent at a Ladies' polling station at Sironj. The respondent has denied these allegations and has stated that his wife came to Sironj to look after himself. While it appears to be very likely that Shrimati Brij Sunder remained at Sironj to canvass support for her husband amongst women voters it was open to the petitioner to produce definite evidence by securing the production of any forms of polling agent in favour of Shrimati Brij Sunder that might have been filed by the Respondent. Assuming, however, that Shrimati Brij Sunder did come to Sironj to canvass support for the respondent and actually did so during her stay at Sironj, her position would obviously be that of a volunteer working of her own accord and the question of her travelling expenses being shown in the respondent's return does not arise in view of the Supreme Court ruling in 10 E.L.R. at page 129 (*Rananjaya Singh Vs. Bej Nath Singh and others*). In that case certain persons employed in the estate of a candidate's father had worked for the candidate in the election and were not shown in the Election Return. It was held that so far as the candidate is concerned such persons must be regarded as mere volunteers. In the light of this ruling it was not necessary for the petitioner to include the expenses of his wife in his election return.

Another point urged during arguments on behalf of the petitioner was that a number of ministers of the Rajasthan Government and Shri Raj Bahadur, Deputy Minister of the Central Government and one Minister of the Bhopal Government are proved or even admitted to have visited Sironj during the bye-election and to have canvassed support for the respondent by addressing meetings and although their visit are said to have been ostensibly for their own official work, their real object having been to canvass support for the respondent, their journey expenses to and from Sironj should have been shown in the respondent's return of election expenses. It is in my view not necessary to consider this argument at all as neither in the petition nor in his statement under 0.10 R.1 did the petitioner take any plea to that effect. The allegations contained in paragraph 16 of the petition in regard to Ministers of the Rajasthan Government (only) having toured the constituency during the bye election was obviously in regard to their flying the national flag and in regard to their being accompanied by District officers whose presence is said to have influenced the voters. This allegation was given up at the time of arguments. In the list of persons given by the petitioner in regard to issue No. 16(b) in his statement under 0.10 R.1 none of the Ministers is included nor did the petitioner file any subsequent list of workers to whom travelling expenses were paid although he had promised to do so in his statement under 0.10 R.1. He could not at the time of arguments be allowed to raise a plea which was not considered directly or indirectly in the petition.

In the result my finding on the issue is in the negative i.e. against the petitioner.

## Issue No. 2.

This issue is connected with paras 4, 5, 6, 7, 8 and 9 of the petition, the gift of which is that the petitioner is a duly qualified elector of the Ladpura constituency of the Rajasthan Legislative Assembly, his name appearing in the Electoral roll of Kotah City, at House No. 186 Ward No. 1, Bheemganj Mandi, that his nomination paper for the bye-election had been duly filed but was improperly rejected at the time of scrutiny on the objection of respondent No. 1 on October, 9, 1953, by the Returning Officer on the ground that there was a defect of a substantial character in the entries in col. No. 8 of the petitioner's nomination form. It is stated in the petition that there was no defect in the nomination form and if there was any it was only of a minor nature and that the nomination having been improperly rejected the result of the bye-election had been materially affected by the rejection.

Apart from the documentary evidence connected with the rejection of his nomination from considered oral evidence has been led on behalf of the petitioner seeking to prove that he had been promised the support of all parties except the Congress before he filed his nomination paper, that non-congress candidates would have withdrawn if his nomination paper had been accepted and that the result of the election had been materially affected by the rejection. The respondent while asserting that the nomination paper was properly rejected, has also adduced evidence seeking to prove that an independent candidate like the petitioner had no chance of being elected in the bye-election of securing any support of the electorate in Sironj, that the petitioner himself had no influence worth the name in the constituency being a stranger to it and that in any case the rejection of the nomination paper has not materially affected the result of the election.

The circumstances under which the nomination paper was rejected are these:—

The petitioner filed 4 nomination forms in all of which he correctly filled his own name in column 2, his father's name in col. 3, his age as 45 years in col. 4 and the name of the constituency in the electoral roll in which his name is included as Ladpura District Kotah in col. 7. In col. 8, however, which is meant for the serial number of the candidate in the electoral roll of the constituency in which he is an elector, the entry made by the petitioner, in the nomination form is to the following effect—

"No. 3834 Ward No. 1, Bheemganj Mandi, Kotah (certified copy of the Electoral roll of 1951 enclosed)".

In columns 10 and 14, however, which are meant respectively for the serial numbers of the proposer and the seconder in the Electoral Roll of the Constituency, the serial number have been filled with reference to the electoral roll of the Sironj Constituency for the year 1952, as noted within brackets in the entries themselves. Along with the nomination paper a certified abstract dated the 1st October, 1953, of the Electoral roll of the Ladpura Constituency for 1951 was filed. In this the serial number of Abhinna Hari S/o Ramgopal, aged 42, is given as No. 3834, as entered in the nomination form. No objection to the entry in column No. 8 seems to have been raised at the time of the filling of the nomination paper by the Returning Officer and notice of the nomination in the prescribed form No. 2 giving the aforesaid particulars as entered in the nomination form was duly affixed. In this, of course, the serial number was given as 3834. At the time of scrutiny, however, i.e. on the 9th October, 1953, the petitioner made an application to the Returning Officer saying that, at the time of filing of his nomination form he came to know that the electoral roll had been recently revised and published in September, 1953, but he had entered the serial number in the nomination form on the basis of the electoral roll of 1951 and that his serial number in the revised electoral roll was 2012, which was a clerical mistake and it may be permitted to be corrected. Along with this application the petitioner filed a certified abstract of the revised electoral roll of 1952 of the Ladpura Constituency in which the serial number of Abhinna Hari, aged 45, address 1/186 has been shown as 2012, the parentage having been omitted.

At the time of scrutiny, three objections as to the petitioner's nomination paper were raised by respondent No. 1 one of which having been rejected by the Returning Officer himself need not be referred to. The remaining two which were accepted were (i) that the candidate having filled in the serial number in col. 8 from the Electoral roll of 1951, which was not in operation, it was a defect of a substantial character and (ii) that the correction of the nomination paper as prayed for by the candidate could not be allowed at the stage of scrutiny in view of the provisions of clause (a) of the Proviso to S.33 (5) of the Representation of People Act, 1951.

On behalf of the petitioner, his learned Advocate Mr. Tyagi argued in view of the provisions of S. 33(1) and S. 36(4) of the Representation of the People Act, 1951, that the only defect in the nomination paper being that the serial number of the 1951 roll entered in col. 8 is different from the one given in the revised electoral roll which had come into vogue only a few days before the date of filing of nomination paper and there being no doubt that the petitioner is a voter in the Ladpura Constituency of the Rajasthan Assembly, the defect was not of a substantial character and the rejection of the nomination was absolutely unjustified. The petitioner having produced at the time of scrutiny a certified copy of the revised electoral roll showing the petitioner's correct serial number, as a voter in the Ladpura Constituency, Mr. Tyagi contends that the Returning Officer could have satisfied himself by a mere summary inquiry by S. 36(2) of the Act that he was such a voter. A number of authorities have been cited in support of the argument that a defect of this nature can only be treated as a technical defect of an unsubstantial character, not justifying the rejection of a candidate's nomination. Mr. Tyagi further contended initially that the error in col. 8 was, in any case, a clerical error, the correction of which should have been allowed by the Returning Officer, in view of the proviso to S. 33(5) read with sub-section (5) of the section.

The respondent's learned advocate Mr. Agrawal, contends on the other hand, that a candidate is required, under S. 33(1) of the Act to complete the nomination form in the prescribed form i.e. to say strictly in the form prescribed in schedule II under Rule 4 of the 1951 rules framed under the Act, that the law obviously requires that the serial number in col. 8 of the nomination form should be filled from the electoral roll in force, which a candidate must be presumed to know, that in completing his nomination form the petitioner having failed within the meaning of clause (d) of S. 36(2) to comply in respect of a very essential particular, with the provisions of S. 33(1) the defect was of a substantial character u/s 36(4) and the nomination was properly rejected. It was further contended that the error in col. 8 was not a clerical error and that the proviso to S. 33 (5) does not contemplate correction even of a clerical error at the stage of scrutiny and that during the scrutiny the nomination form has to be seen as presented. A number of authorities both English and Indian were cited in support of the contention that such a defect in the nomination form justifies its rejection on the ground that it is a substantial defect.

Before dealing with the question of substantial or unsubstantial nature of the defect it would not be out of place to refer to the relevant provisions regarding the preparation and publication of the electoral rolls.

Under S. 19 of the Representation of the People Act 1951, every person "who has been ordinarily resident in a constituency for not less than 180 days during the" qualifying period and was not less than 1 year of age on the qualifying date is entitled to be registered as a voter in the electoral roll of that constituency.

Under S. 21 of the same Act the "qualifying date" in the case of the electoral roll first prepared under the Act is the first day of March, 1950 and the qualifying period is the period beginning on 1st day of April, 1947 and ending on the 31st day of December. 1949 U/S 24 of the Act this first electoral roll was to *remain in force until the 30th day of September, 1952* and during the General Elections this roll came to be called the electoral roll for 1951. U/s 23 the electoral roll is to be prepared every year, except in 1951 in the prescribed manner by reference to the qualifying date. U/s 24 every roll prepared subsequent to the first one is to come into force on the 1st of October next after the qualifying date by reference to which that roll is prepared and is to remain in force until the 30th September next following, unless for any reason the electoral roll for the constituency is not published in the prescribed manner before the 1st day of October in any year, in which case the electoral roll in force immediately before that date has to continue in force. In the Ladpura Constituency it seems, the so-called electoral roll for the year 1951 could not be revised by the first day of October, 1952 and it, therefore, continued to remain in force until some time in September, 1953, when the revised electoral roll for 1952, i.e. the roll prepared by reference to the qualifying date of 1st March, 1952, seems to have come into force. This appears from a statement to that effect in the petitioner's own application Ex. P.4 dated the 9th October, 1953, made to the Returning Officer for being permitted to correct the serial number entered by him in the nomination form, with reference to the 1951 roll. This statement in the application has remained uncontroverted even during arguments and it may be assumed that it is a correct statement regarding the time of revision of the 1st Electoral roll of Ladpura constituency i.e. the 1951 roll.

As admitted by the petitioner, in his own evidence, he was not aware upto the time of filing of his first two nomination forms that the 1951 electoral roll had

been already revised both in Sironj and in Ladpura and he actually filled in the serial number of even his proposer and seconder from the 1951 electoral roll for Sironj. By the time of filling the remaining two forms, however, he had discovered the mistake and rectified it by filling the serial number of the proposer and seconder in columns 10 and 14 of these two forms from the revised roll of Sironj i.e. for 1952, which must have been made available to him then and there. But his own serial number in col. 8 of even these two subsequent forms had to be filled from the obsolete 1951 roll of Ladpura Constituency in spite of the discovery of the error, obviously because it was not possible for the petitioner to procure then and there, the revised roll of Ladpura in Kotah, which is separated from Sironj by a distance of several hundred miles. It be not a here that Ex. P.2B, the certified abstract of the 1951 roll of Ladpura filed by the petitioner with his nomination form appears to have been supplied to him as late as 1st October 1953, while the date fixed for filing of nomination forms at Sironj was 5th October 1953 and the date of scrutiny 9th October 1953. Unfortunately it does not appear from Ex. P.2/B on what date the copy was applied for. It may, however, be presumed that the petitioner himself had applied for the relevant abstract of the 1951 roll. It is thus clear that the wrong entry of serial number in col. 8 of the first two nomination forms was in no sense a clerical error, the entries having been made not only in col. 8 but also in columns 10 and 14 of the form deliberately under a misconception that the 1951 electoral roll still continued in force while in the subsequent two forms the incorrect entries in col. 8 were made with the full consciousness that they were incorrect, having been made from an obsolete roll although the entries in columns 10 and 14 were now correctly made from the Sironj Electoral Roll for 1952. Since a candidate of ordinary prudence is expected to know whether the electoral roll of his own constituency i.e. of the constituency in which he is registered as a voter has been revised or not it is undoubtedly a case of negligence and not a mistake committed in good faith. But the petitioner tried to make amends for it by filing, at the time of scrutiny a certified abstract of the 1952 roll of Ladpura Constituency Ex. P.3, in respect of his ward No. 1 and by pointing out the correct serial number through an application. The Returning Officer was undoubtedly right in rejecting the petitioner's prayer for correction of the entry in col. 8 as already pointed out, it was not a clerical error and since the proviso (a) 2 S. 33(5) read even with sub-section (6) does not seem to contemplate that a candidate could be allowed under any circumstances to correct even a clerical error in his nomination form at so late a stage as the stage of scrutiny. Sub-section (5) and (6) of S. 33 run as follows:—

“(5) On the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls.

Provided that the Returning Officer may—

- (a) permit any clerical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls; and
- (b) where necessary direct that any electrical or printing error in the said entries shall be overlooked.

(6) If at the time of the presentation of the nomination paper the Returning Officer finds that the name of the candidate is not registered in the electoral roll of the constituency for which he is the Returning Officer, he shall for the purposes of sub-section (5) require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such roll”.

It will be seen that sub-section (5) requires the Returning Officer to satisfy himself at the very time of the presentation of the nomination paper, as to the identity of the names and electoral roll numbers of the candidate and of his proposer and seconder as entered in the nomination paper with those in the electoral rolls and since the proviso (a) follows immediately after this, it may be safely deduced that any clerical error in the nomination paper in regard to the said names and numbers can be permitted by the Returning Officer to be corrected at that very time, but not later, in order that they may correspond with the entry in the electoral roll. Where the candidate is a voter in the very constituency for which he is standing there can be no doubt as to the above interpretation of clause (a) of the proviso. But some doubt in view of the language of sub-section (6) may arise where, as in the present case, the candidate is a voter of some other constituency of the Assembly. In such a case the Returning Officer has to require the person presenting the nomination paper to

produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such a roll. It was suggested at the time of arguments by Mr Tyagi that the language of sub-section (6) does not rule out the candidate being required in such a case to produce the copy of the electoral roll or a certified abstract of the roll even sometime later *ie* upto the date of scrutiny. But, in view of the opening words of sub-section (6) namely "if at the time of the presentation of the nomination paper" and the words "for the purposes of sub-section (5)" occurring further on in the sub-section and reading these along with sub-section (5) itself it seems to me that the object of sub-section (6) is that the candidate "at the time of the presentation" of his nomination paper is expected to come armed with either a copy of the electoral roll of which he is an elector or its relevant abstract which the Returning Officer can immediately ask him to produce in order that the latter may satisfy himself as required by sub-section (5) as to the identity of the entries regarding names and electoral roll numbers in the nomination form and in the electoral roll. The question of corrections being allowed at the time of scrutiny, in even a clerical error in the names or electoral roll numbers as entered in the nomination form, therefore, does not arise. The Returning Officer was quite justified in not permitting correction, as prayed for since the error in question was neither clerical nor could it be allowed to be corrected except at the time of presentation. In fact Mr Tyagi practically conceded during further arguments that it was not an error of a clerical nature. It follows, therefore, that at the time of scrutiny the nomination form had to be examined as it existed, that is to say, without any corrections.

As to whether the aforesaid defect in col 8 of the petitioner's nomination form was a technical defect of a substantial or unsubstantial character it is necessary to consider the different provisions of law and of the Rules if any which have a bearing on the point.

Section 5(c) of the Representation of the People Act, 1951, provides the qualification for being chosen to fill a general seat in the Legislative Assembly of a State. The required qualification is simply that he should be an elector for any Assembly Constituency in that stage. Article 173 of the Constitution also provides that a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless he is a citizen of India, is not less than 25 years of age and possesses such other qualifications as may be prescribed in that behalf by or under any law made by the Parliament. S 7 of the Act with which we are not concerned in the present case, provides the disqualifications for membership of a State Legislature and Article 191 of the Constitution also provides certain disqualifications for membership of a Legislative Assembly with which again we are not concerned in the present case. S 30 of the Representation of the People Act provides for the fixing of a date for filing of nomination and another date not later than the 7th day after such date, for the scrutiny of nominations. S 32 of the Act lays down that any person may be nominated as a candidate for election to fill a seat in any constituency if he is qualified to be chosen to fill that seat under the provisions of the Constitution and of the Act. Then follows S 33 of which the relevant portion of sub-section (1) being particularly important, requires that each candidate shall deliver to the Returning officer a nomination paper *completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two persons referred to in sub-section (2) as proposer and seconder*.

S 35 requires the Returning Officer on receiving the nomination paper u/s 33(1) to complete certain formalities and as soon as may be thereafter to cause to be affixed a notice of the nomination containing descriptions similar to those contained in the nomination paper of the candidate.

The relevant provisions of S 36 which are as important as those of S 33(1) for the present case, are as follows —

36(1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents one proposer and one seconder of each candidate, and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the Returning officer may appoint, and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

(2) The Returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he

thinks necessary, refuse any nomination on any of the following grounds:

- (a) that the candidate is not qualified to be chosen to fill the seat under the Constitution or this Act; or
  - (b) that the candidate is disqualified for being chosen to fill the seat under the Constitution or this Act; or
  - (c) that a proposer or seconder is disqualified from subscribing a nomination paper under sub-section (2) of section 33; or
  - (d) that there has been any failure to comply with any of the provisions of section 33 or section 34; or
  - (e) that the signature of the candidate or any proposer or seconder is not genuine or has been obtained by fraud.
- (3).....
- (4) The Returning Officer, shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character".

Rule 4 of the Conduct of Election Rules 1951 provides that every nomination paper delivered under sub-section (1) of Section 33.....shall be completed in the form specified in Schedule II. Schedule II which contains the prescribed form of the nomination paper contains an elaborate heading and 16 columns or items to be filled by the candidate and some of them by the proposer or seconder. Then there are various other formalities and requirements to be fulfilled as provided at the back of the form and following these there are elaborate instructions as foot notes in regard to the method of filling up of date and various items of the form. Column 8 of the form which is primarily under consideration in the present case "relate to the serial number of the candidate in the electoral roll of the constituency in which his name is included" It may be noted here that R.2(b) of the aforesaid rules defines "the serial number of an elector in an electoral roll" as including such particulars regarding the name or description of the electoral area in reference to which the said electoral roll has been prepared, as will identify the entry relating to such elector in that electoral roll. Foot note 6 of the nomination form, which seems to reinforce the above definition provides that, where an electoral roll is sub-divided into parts and separate serial numbers are assigned to the electors entered in each part, a description of the part in which the name of the person concerned is entered must also be given in items Nos. 8, 10 and 14.

It may be added here that while col. 7 requires the description of the constituency in the electoral roll of which the name of the candidate is included, Col. 8 is meant for the serial number of the candidate in the electoral roll of the Constituency in which his name is included. It is obvious that the entries in columns 7 and 8 are both intended to show the candidate's eligibility for the membership of the legislature u/s 5(c) of the Act, and also to provide ready material to the Returning Officer for determining the identity of the candidate as an elector in the constituency. Col. 4 which is meant for description of the age is also part of the required qualifications.

Reverting now to the provisions of S.36(2) there can be no doubt that it is open to the Returning Officer to refuse nomination on any of the five grounds contained in clauses (a) to (e) each of which stands by itself. As will be seen clauses (a) and (b) of the sub-section relate specifically to the qualification or disqualification of a candidate, clause (c) to the disqualification of the proposer or seconder and clause (e) to the genuineness of the signature of the candidate or any proposer or seconder. Clause (d) is obviously confined to any failure to comply with any of the provisions of section 33 or section 34. Any non-compliance with the method of completion of the nomination form as prescribed in section 33(1) read with Rule 4 of the Election Rules, 1951, and Schedule II will, therefore, make the nomination form liable to be rejected independently of the provisions of clauses (a), (b), (c) and (e) the only condition being, as provided in sub-section(4) that a nomination paper shall not be rejected on the ground of any technical defect which is not of a substantial character. What is or is not a matter of substance for the purposes of clause (d) of sub-sec.(2) and sub-sec. (4) has to be judged in the light of the intention of the framers of the Act, and the rules thereunder. But I am unable to accept the view that under cl. (d) only such non-compliance should be a matter of substance, as would necessarily affect the qualifications of a candidate or of a proposer or seconder or the genuineness of the signature of any of the three i.e. to say only such non-compliance as would necessarily attract the provisions of any of the remaining clauses also of sub-section (2). That will mean that the application of clause (d) by itself, read with sub-section(4) will not suffice for the rejection of a nomination paper. Such a view does not seem to be in accord with the scheme of S. 36. A careful perusal

of various provisions of the Act including particularly S.33 and S.40 and the foot notes in Schedule II, will show that there is a considerable emphasis in these provisions on certain formalities and technicalities to be observed at particular points of time and I am not convinced that the observance of these formalities as prescribed under the various provisions, is not by itself a matter of substance, generally. As observed by their Lordships of the Supreme Court in A.I.R. 1954 SC 510 "when the law enjoins the observance of a particular formality it cannot be disregarded and the substance of the thing must be there".

In dealing with the completion of a nomination form as prescribed in Schedule II, certain particulars required to be filled up are of obvious importance and there are others in the filling up of which defects may obviously be overlooked. For instance foot note 3 of the nomination paper requires that the inappropriate alternative should be struck off in filling up column 3 of the form. The item contains the father's name and the husband's name in the alternative. Where the candidate is a married woman the foot note requires her husband's name to be filled in but it may happen that while the husband's name is filled in by such a candidate, the father's name may be omitted to be struck off. Such a defect in the completion of the nomination paper would obviously be a technical defect of an unsubstantial character, and would not justify rejection of a nomination paper. The defect in filling up col. 8 of the nomination form by the petitioner in the present case is undoubtedly a non-compliance with the provisions of S. 33(1) within the meaning of clause (d) of S.36(2). But whether it is a defect of a substantial or un-substantial character, I shall finally decide after dealing with the authorities cited on behalf of the parties. I shall first deal with the authorities cited on the petitioner's behalf.

In *Gurnam Singh Vs Pratap Singh* (7 E. L. R. 338) the electoral roll number of the candidate as given against column No. 8 of his nomination paper was No. 342 in village A in ignorance of the fact that the entry relating to this had been struck off by a supplementary list but, at the time of scrutiny the candidate pointed out to the Returning Officer that he was also registered as a voter in village against S. No. 3241. The Returning Officer, however, rejected the nomination on the ground that the candidate had given an electoral roll number which did not exist, without making any summary enquiry whether the candidate was entered as a voter at Serial number 3241 in village B. In these circumstances it was held by the Election Tribunal Ludhiana that there was only a *bonafide* mistake in entering the serial number of the candidate in the electoral roll and since there was no doubt as to the identity of the candidate the rejection of the nomination was improper without a summary enquiry whether he was entered as a voter in village B. With all respect to the learned Tribunal I find it difficult to agree with the principle of this decision for reasons which I shall presently explain. If, however, the question of *bonafides* or good faith is material in a candidate's filling of a nomination form in the prescribed manner, the question of due care and caution would also come in naturally, and applying the principle to the present case, I am unable to hold that the petitioner in wrongly filling col. 8 of his nomination form from an obsolete electoral roll had committed a *bonafide* mistake, since if he had exercised due care and caution he could have known that the 1951 electoral roll had been already revised in September 1953, as stated in his own application Ex. P. 4 made to the Returning Officer, while the date fixed for filling of nomination papers was the 5th October 1953.

In the case of *Sitaram Sharma Vs Lalit Bahadur Kharga* (1 E. L. R. 252) the part of the sub-division of the electoral roll in which the name of the candidate proposer and seconder appeared had not been mentioned in filling up columns No. 8, 10 and 14 of the nomination paper. But it was found on the facts that no difficulty could arise in finding out the correct entries relating to the candidate, proposer and seconder if the Returning Officer had looked into the electoral roll of the respective sub-division. In this case the sub-divisions were further sub-divided into parts and in these circumstances the Election Tribunal, West Bengal, held that the defect was only a technical defect of an unsubstantial character and that the Returning Officer acted improperly in rejecting the nomination paper. This case was based on foot note 6 of Schedule II and since the Tribunal found that there was a substantial compliance with the relevant provisions, i.e. to say the entries already made practically served the purpose in view, the decision, to my mind is not applicable to the facts of the present case.

In the case of *Rama Krishna Reddy Vs Kamla Devi* (5 E. L. R. 173) the candidate had left blank columns 7 and 8 of his nomination paper because his name was not on the electoral roll at the time of filling up of the nomination form although she had applied in good time under Rule 20 of the Representation of the People Rules, 1950 to the Election Commission for the inclusion of her name. The Election Commission, however, issued a direction on the very date on which the nomination paper had to be filed, for the inclusion of the candidate's name

in the electoral roll but there was no evidence as to the exact time at which the direction was issued. In these circumstances it was held by the Election Tribunal, Secunderabad, that the direction must be presumed to have been issued before the expiry of the time fixed for filing nomination, on that day. In the Tribunal's view there had been a substantial compliance by the candidate with the provisions with regard to the filling up of the nomination paper. With all respect to the learned Members of the Tribunal I am unable to agree that such a presumption, as was sought to be drawn by them, could be justified under the law. I am also unable to agree that a candidate can be deemed to have substantially complied with the provisions regarding the filling up of the nomination form, even if he leaves columns 7 and 8 blank simply because he was not in a position to do so at the time of filling up of his nomination form. In my view the inability of a candidate to fill up these columns for whatever reasons, is not at all material when considering the question of compliance with the provisions of S. 33.

Lastly in the case of Karnail Singh Vs Election Tribunal, Hissar and others (10 E. L. R. 139) which has to be read with the case reported in 6 E. L. R. 368, the constituency was composed of two towns Sirsa and Dabwali, each of which was divided into wards and in a nomination paper, against column 3, the candidate had simply mentioned "1400 Ward No. 1" without adding Sirsa also, but it appeared that in Ward No. 1 of Dabwali there were not more than 800 voters and there would have been no difficulty in tracing out the entry against 1400 Ward No. 1 in Sirsa. But Returning Officer rejected the nomination on the ground that the name of the Ward in which the candidate's name was entered was not given. In his order of rejection, however, the Returning Officer himself had observed that he was satisfied as to the eligibility of the candidate to stand for election. In these circumstances the majority of the Election Tribunal, Hissar had held, in 6 E. L. R. 368, that there was only a technical defect not of a substantial character and that the nomination paper was improperly rejected. In appeal the Supreme Court affirmed the decision of the majority of the Tribunal that the defect was not of a substantial character. Obviously the majority decision of Tribunal in this case was based on the absence of any difficulty in locating the entry in the electoral roll of the Constituency in which the name of the candidate was entered by reference to the particulars already supplied in col. 8 of the nomination paper. It was a case based on foot note 6 of Schedule II and the rejection of the nomination paper in the face of the Returning officer's own observation, in his order of rejection, that he was satisfied as to the eligibility of the candidate was incapable of being defended.

The following are some of the rulings cited on behalf of the respondent by Mr. Agrawal:—

In the case of the Queen Vs Tugwell, reported in (1868) 3 Q.B. 705, which arose from the election of town councillors in a Municipal corporation, S.32 of the Municipal Corporation Act required the voting paper to contain the Christian names and surnames of the person for whom the burgess votes, with their places of abode and description. S.142 laid down that no inaccurate description of any person, body corporate or place, names ... in any roll list, notice or voting paper required by the Act, shall hinder the full operation of the Act in respect to such person etc. provided that the description of such person etc. be such as to be commonly understood. At the election a voting paper contained the Christian name and surname of the candidate and his place of abode and nothing more. It was held that this was not merely an inaccurate description but the total omission of the description of the candidate and was not cured by S.142 and the vote was, therefore, invalid. In his judgment Cockburn C. J. made the following important observations which have a bearing on the present case:—

"There cannot be the slightest doubt that everybody understood which candidate was meant by these voting papers, but the question is whether, as S.32 has not been complied with S.142 cures the defect. Now this is not an inaccurate description but a total omission of "description" which is one of the things required by S.32, and the omission is not cured by S. 142, and is, therefore, fatal to the validity of the voting papers; no doubt there is a proviso that inaccuracy is not to vitiate provided the description be such as to be commonly understood, but the words are not large enough to cure a total omission".

In Baldwin and others Vs Ellis and others (1929) I.K.B. 273 it was held that the omission to state, in the nomination paper, as required by rule 4 of the Rural District Country Election order—the name of the parish for which the person nominated was qualified as a local Government elector was a non-compliance with the said rule and the omission was not merely an inaccurate description of the person nominated, within rule 33 of the order of 1898 but it was a non-compliance.



with the requirements of Rule 4 of the said order. The nomination paper was rejected, following Tugwell's case cited above.

It will be seen that in the above two leading English cases which lay down the principles for judging the completeness of a nomination form, there was an omission to fill in certain details only not affecting the candidate's identity and yet it was held that the requirements of law must be strictly complied with.

In *Frankal Thakorlal Munshi V Indubhai Bhailabhai Amin* I.E.L.R. 182 it was held that the omission to mention the age of the candidate in a nomination paper is a defect of a substantial character justifying the rejection of the nomination paper. The Tribunal observed that on the plain meaning of section 36(2) it could not be said that the Returning Officer is bound to make any enquiry in the case of a total omission because even if the officer had instituted any inquiry and learnt that the omission had occurred through oversight he could not have permitted the petitioner to make good the omission entirely agree with these observations. The tribunal further observed that any reference to age is a matter of substance or essence and any omission of age is a substantial omission and laid down the principle that if the nomination paper, as it is before the Returning Officer substantially complied with the requirements of description of particulars which are sufficient to indicate the identity and eligibility of the petitioner then it may be deemed that the nomination paper is in order and it will not be proper to reject it.

In *P. N. Balasubrahmanyam V C. R. Narasimhan and others*, I.E.L.R. 461 the candidate was not entered on any electoral roll at the time of nomination but got his name entered on an electoral roll before the date of scrutiny of the nomination paper and produced that electoral roll before the Returning Officer at the time of scrutiny. It was held by the Election Tribunal, Vellore in these circumstances that the question of qualification or disqualification of a candidate has to be ascertained with reference to his status on the date of his nomination and that the nomination of a person who was not on a roll at the time of nomination cannot be validated by a subsequent amendment or revision of the roll. The Tribunal further observed that the statutory provision regarding the insertion of the constituency and the number of electoral roll as prescribed in columns 7 and 8 of the form of nomination are matters of substance and not of mere form and omission to fill in these particulars is a proper ground for rejecting a nomination. I entirely agree with these observations of the Tribunal.

In *P. N. Balasubrahmanyam V Election Tribunal, Vellore and others* 8 E.L.R. 496 which is a decision of a Division Bench of the Madras High Court composed of Rajamannar, C. J. and Venkatarama Ayyar, J, arising from the order of the Vellore Tribunal in 1 E.L.R. 461 cited above, it was held, relying on the case of *Baldwin V Ellis* in (1929 I.K.B. 273) that the failure of the candidate to fill up the particulars as to the name of the constituency in the electoral roll of which his name was included and his serial number in that electoral roll was a substantial defect which the Returning Officer had no jurisdiction to overlook since, without these particulars *ex facie* there was nothing to show that the petitioner was in fact a qualified elector in respect of the constituency. Their Lordships agreed with the Election Tribunal that the omission to give the particulars as to the electoral roll and serial number therein was a good ground for rejection of the nomination paper by the Returning Officer under section 36(2) (d) of the Act. This is a very important decision which is applicable to the facts of the present case.

In *Raddrudduja Syed V Mohammad Khoda Buksh and others* E.L.R. 189 it was held that in a parliamentary constituency had omitted to mention in a nomination paper, the name of the relevant parliamentary constituency in which his name was included and his serial number in the electoral roll of that constituency but had given instead the name of the Assembly Constituency and his serial number therein. The assembly constituency of which the particulars were given in columns 7 and 8 of the nomination form formed one of the units of the parliamentary constituency. In these circumstances it was held by the Election Tribunal, West Bengal that, although there is presumption that a person whose name is entered in the roll of an Assembly constituency is a parliamentary elector, a candidate cannot rely on this presumption alone and he must comply with the requirement of section 33 of the Representation of the People Act 1951 with regard to the particulars to be stated in a nomination paper and that the omission to mention these particulars in a nomination paper are grave errors and irregularities which materially affect the validity of a nomination and afford a sufficient ground for rejection of the nomination paper. The Tribunal observed that the particulars required to be filled in items Nos. 7 and 8 of the nomination paper i.e. to say the name of the constituency in the roll of which the candidate's

name appears and the serial number in that electoral roll, are necessary particulars to determine the identity and the eligibility of the candidate as an elector and such essential particulars should be clearly stated in unequivocal, unambiguous and explicit terms not only for the clear understanding of the Returning Officer but for that of the other candidate, for whose information a notice of the nomination containing description similar to those contained in the nomination paper must be published under section 35 of the Act, according to the Tribunal therefore there had been a substantial failure to comply with the provisions of section 33.

At page 199 of the report the Tribunal made the observation that Sayed Baddrudduja a lawyer and a Muslim political leader did not seem to have cared to ascertain even at the time of scrutiny the name of the parliamentary constituency in the electoral roll of which he is included as an elector. It was further observed that, evidently, it was not mentioned before the Returning Officer that the petitioner was an elector registered in the electoral roll of Calcutta South-East parliamentary constituency. Relying on these observations, Mr. Tyagi argues, on behalf of the petitioner, that the Tribunal appears to have been influenced by the fact that even at the time of scrutiny the candidate had not produced or pointed out the electoral roll of the parliamentary constituency in which his name was entered as an elector. There is, however, no basis for such a conclusion since the Tribunal has made the further observation at page 201 of the report that even if the petitioner had produced the correct electoral roll at the time of scrutiny he could not have been allowed under the proviso of section 33 (5) to amend his nomination paper as the errors are not clerical and could not be permitted to be corrected even at the time of presentation of the nomination papers. The Tribunal made it clear (at page 201) that if the correct electoral roll had been produced even at the stage of scrutiny it could not be any of avail as there were vital defects in the nomination paper itself. It also appears from the judgment of the Tribunal that Sayed Baddrudduja having been a well-known figure in the public life of the country the question of his identity did not arise and in fact, as in the present case, no objection as to his identity had been raised at the time of scrutiny.

The facts of this case bear great similarity to those of the present one and the judgment of the Tribunal in my view is fully applicable to the present case.

In *Narottam Singh V Desraj* 3 E.L.R. 309, there was a total omission to fill in the name of the proposer in column No. 9 of the nomination paper. It was held in these circumstances by a majority of the Election Tribunal, Patiala that the total omission of the name of the proposer in column 9 is not a mere technical defect of unsubstantial character but a substantial defect for which a nomination can be rejected. It was observed by the majority that the fact that the name of the proposer could be ascertained from his signature and from his electoral roll number which was given in the nomination paper is immaterial and cannot cure this defect. In his dissenting judgment the Chairman of the Tribunal however held that substantial compliance with the details to be filled in the nomination paper, which are intended to ensure either the identity or eligibility of the candidate and proposer and the seconder, is all that is required and since, in spite of the omission, the necessary particulars could be ascertained from other entries in the form the defect was more or less formal and not of a substantial character the name being evident from the signature of the proposer appearing against column 12. According to the majority judgment, therefore, an omission in a material particular in the nomination form cannot be cured by looking to other particulars available in the form itself. I entirely agree with this view.

In *Ranchhodlal Liladhar Vayeda V Election Tribunal, Ahmedabad*, 8 E.L.R. 59 which is a decision of a Division Bench of the Bombay High Court, composed of Chagla C. J. and Shah J., arising from an order of the Election Tribunal, Ahmedabad reported as 4 E.L.R. 493 the candidate while presenting his nomination paper on the 24th November 1950 had left column number 8 blank since his name was not in the electoral roll, although he had already applied to the Election Commission for including his name in the electoral roll and the Commission had passed an order on the 23rd November for including his name in the electoral roll but this fact was not known to the candidate or to the proposer or seconder. The Tribunal had held that, unless a candidate is a qualified elector to the knowledge of his proposer and seconder when the nomination is presented the nomination cannot be regarded as nomination by a qualified elector. The Tribunal had further held that the nomination paper has to be scrutinised as it stood when it was presented and, notwithstanding rule 30 of the R.P. Rules 1950, the nomination could be rightly rejected on the ground that the

candidate did not comply with the requirements of law. Their Lordships held that the view of the Tribunal that the knowledge of the proposer and seconder as to the candidate being qualified to stand is necessary for valid nomination was wrong but there was non-compliance with the provisions of section 33 and the Returning Officer had jurisdiction to reject the nomination on this ground but the election Tribunal should have carefully considered the question whether the defect was a substantial one with reference to the provisions of section 36(4). Their Lordships, however, observed that if they were a court of appeal or if they were deciding the election petition very likely they would have found it very difficult to take the view that the non-compliance on the part of the petitioner was of a substantial character. It was impossible for the petitioner, when he filed the nomination paper to have complied with the specific provisions of section 33(1). He was awaiting the decision of the Election Commission which was ultimately communicated to the Returning Officer. Mr. Tyagi in his arguments relies on these observations of their Lordships in support of his plea that the defect in filling column No. 8 of the petitioner's nomination paper were similarly of an unsubstantial character. These observations were however hypothetical and it could not be said with certainty what view their Lordships could have taken if the case could have gone up to them in appeal. Evidently, their Lordships observations, relied only by Mr. Tyagi, were based on the circumstance that it was impossible for the candidate at the time of filing his nomination to fill up the relevant column.

Assuming that it is permissible or even necessary for the Tribunal to consider whether a candidate who had left blank a material column in his nomination paper, was in a position to fill it up or not on the date fixed for filing of the nomination papers, the question still arises whether the candidate had done all that reasonably lay in his power to fulfil the requirements of the law in filling up the nomination form. In the above case the candidate had made a timely application to the Election Commission for including his name in the electoral roll and had noted this fact against column 7 while he had left column No. 8 blank. In the present case it cannot be said that the petitioner was not in a position to fill up column 8 correctly if he had taken reasonable care to obtain the revised electoral roll of his own constituency. Here it is a case of gross negligence.

Finally in the case of Rattan Anmol Singh Vs Chowdhury Atma Ram and others, A.I.R. 1954 S.C.510, to which I have already referred, the following observations which were made by their Lordships at page 513 with respect to the provisions of sections 33 and 36 of the Representation of the People Act 1951 are fully applicable to the present case.

"Section 36 is mandatory and enjoins the Returning Officer to refuse any nomination when there has been any failure to comply with any of the provisions of section 33.....

The only jurisdiction the Returning Officer has at the scrutiny stage is to see whether the nominations are in order and to hear and decide objections. He cannot at that stage remedy essential defects or permit them to be remedied. It is true he is not to reject any nomination paper on the ground of any technical defect which is not of a substantial character but he cannot remedy the defect. He must leave it as it is. If it is technical and unsubstantial it will not matter. If it is not, it cannot be set right".

In that case the petitioner had put in 4 nomination papers before the Returning Officer in each of which the proposer and seconder were illiterate and had placed thumb marks instead of signatures in columns 12 and 16 of the nomination paper but these thumb marks were not attested. In these circumstances the proposer and seconder were found not to have subscribed the nomination paper within the meaning of section 33 and in the prescribed manner as required by Rule 2(2) of the Representation of the People (Conduct of Election and Election Petitions) Rule 1951. Their Lordships held that attestation by the Returning Officer or other specified officer as enjoined by the law was not a mere technical or unsubstantial requirement and could not be disregarded and that the substance of the thing must be there, which in this particular case was the satisfaction of the Returning Officer at a particular moment of time about the identity of a person making a mark in place of writing a signature. It was further held by their Lordships that the attestation and the satisfaction must exist at the presentation stage and a total omission of such an essential feature cannot be subsequently validated any more than the omission of a candidate to sign at all could have been.

The ratio decidendi of the above authorities, as I understand it, is that the filling up of the required details in the nomination form in the prescribed manner is not always a matter of form but where the required particulars are to be filled in an essential item such as columns 7 and 8 affecting the identity and the eligibility of the candidate they are a matter of substance and any omission to fill up the required particulars or even a gross misdescription in the filling up of such particulars is a defect of a substantial character even if technical within the meaning of section 36(4) and would justify rejection of the nomination paper under section 36(2) (d) on the ground of failure to comply with the provisions of section 36. A total omission to fill up any such essential item cannot be remedied, at the time of scrutiny, by supplying the necessary particulars then since there is no scope left even for summary enquiry under section 36(2) where there is such a total omission of any essential particular in the nomination form, I have already shown that such an error is neither a clerical error within the meaning of section 35 nor can it be permitted, even if it is a clerical error, to be corrected except at the time of presentation of the nomination paper. To allow such essential particulars to be furnished at the time of scrutiny would be tantamount to permitting the blank entries to be filled up at that time or to be corrected at that time even where there is a gross misdescription with respect to such essential particulars in the nomination form. Section 33 does not seem to contemplate such a course. Where, as in 6 E.L.R. page 368, the entries already present in the nomination form, although incomplete in the strict sense, are in themselves sufficient, with a slight effort, on the part of Returning Officer at the time of scrutiny, to locate the candidate's name and serial number in the electoral roll, the defect would be unsubstantial.

In some of the authorities cited above where there was even a total omission to fill up essential columns like numbers 7 and 8 of the nomination form the bonafides of the candidate or his inability to supply the necessary particulars at the time of nomination have been taken into consideration and these factors seem to have influenced the decision. If bonafides are relevant then the question whether the candidate has taken reasonable care to secure the necessary material for the filling up of the nomination form would also become material.

In the present case the petitioner filling up of such an essential item as column 8, affecting his identity and eligibility from an obsolete or legally non-existent electoral roll virtually, amounted to a total omission in filling up that item or in any case to a gross misdescription in respect of that item which could in no sense be deemed to be a bonafide error, if the bonafides be material. The error could not have been corrected at any stage after presentation and the Returning Officer could not have looked at the certified abstract of the revised roll supplied by the petitioner at the time of scrutiny in view of the virtual absence of the serial number in the nomination form. In such a case even the provisions of S 36(7) (a) laying down that for the purpose of the section to production of a certified copy of an entry in an electoral roll of a constituency would be conclusive evidence of the right of any elector named in that entry to stand for election, would not avail, due to vital defects in the nomination paper itself as held in 2 E.L.R. 189.

I may further add that the provision in S 33(5) for the correction of a clerical error in respect of name and electoral roll number only of a candidate etc. need not be construed as indicative of the comparative unimportance of these particulars. On the contrary the provisions may signify the importance of a correct entry in respect of these particulars in the form itself. I could not find any authority in support of the proposition that the filling up of column No 8 is not a matter of essence as compared to column 7 or say column 4. In my view columns 7 and 8 are of equal importance for the identity and eligibility of the candidate which go hand in hand. It is true that the question of identity of the petitioner in the present case was not raised at the time of scrutiny nor has it been raised at the trial of the petition itself but that makes no difference to the decision of the issue where there is a substantial non-compliance with the provisions of section 33, as held in 2 E.L.R. 189. I may add that a defect which is of a substantial nature at the time of filling up of the nomination paper cannot become unsubstantial by supplying further material at the time of scrutiny. The provision for summary enquiry in S 36(2) seems to be intended primarily to afford, an opportunity to a candidate for rebuttal, in case of an objection as to his qualification or disqualification of any allegation of fraud.

For the foregoing reasons I find that the petitioner's nomination was properly rejected. The question of the material effect of improper rejection on the result of the election, raised in the second part of the issue, does not arise.

In view of my findings on issues other than Nos. 15 and 16, I would hold that the respondent No. 1 was duly elected and would dismiss the election petition. In view, however, of my findings on issues Nos. 15 and 16 as to the commission by respondent No. 1 of a minor corrupt practice under Section 124(4) of the Act and in view of the provisions of Sections 140 and 141, respectively, under which the commissions of a corrupt practice under Section 124 necessarily entails disqualification for membership of a State Legislature as also for parliament for six years and for voting at any election also for six years the respondent would accordingly stand disqualified under Section 140 and 141 for six years with effect from the date of this order. In the special circumstances of the case I would not award any costs to the respondent.

The 30th April, 1955.

(Sd.) ANAND NARAIN KAUL, *Chairman.*

## JUDGMENT

(By Gurtu and Rastogi, Members.)

*Per Gurtu Member—*

The election petition was filed on 5-2-54 by Pt. Abhinna Hari son of Pt. Ram Gopal resident of 186, Bheem Ganj Mandi, Kotah, praying that the election of respondent No. 1 Shri Brij Sunder Sharma, Advocate, resident of C-Scheme, Jaipur to the Rajasthan Legislative Assembly from the Sironj constituency at the bye-election held in November 1953 be declared void and he be unseated and fresh election be ordered for the constituency.

Succinctly the facts are that a bye-election was held on the 15th November, 1953 to the Rajasthan Legislative Assembly for the Sironj Constituency in Kotah District. The petitioner and respondents No. 1 to 8 were candidates at the bye-election and filed their nomination papers on the 5th October, 1953. The petitioner filed four nomination papers. They were all rejected by the Returning Officer. Only respondents No. 1 to 3 contested the bye-election and the rest of the respondents did not or could not contest the bye-election for one reason or the other.

The contesting candidates secured votes as under:—

<i>Name of the candidate</i>	<i>Name of his Party</i>	<i>No. of votes secured</i>
1. Shri Brij Sunder Sharma	Congress	8,892
2. Shri Madanlal Agarwal	Hindu Maha-Sabha	8,326
3. Shri Kesri Mal Jain	P.S.P.	1,182

Since the highest number of votes were secured by respondent No. 1 Shri Brij Sunder Sharma, the Congress party candidate, he was declared elected.

The petitioner seeks to have the election of the respondent No. 1 Shri Brij Sunder Sharma, declared void, *inter alia*, on the following grounds:—

1. That the petitioner's nomination paper was improperly rejected and the result of the election has thereby been materially affected.
2. That the respondent No. 1 himself or through his agents obtained or procured assistance of Shri Bakshi, Executive Engineer, Bundi, for furtherance of the prospects of his election on this occasion. Shri Bakshi was serving under the Government of State of Rajasthan as Executive Engineer. Shri Bakshi toured the constituency for the aforesaid purpose towards the end of September and beginning of October 1953.
3. That the respondent No. 1 submitted a false account of his election expenses and deliberately withheld certain items of expenditure which he incurred. The details of such expenditure are given in Schedule III, and that respondent No. 1 exceeded the limits of the maximum prescribed expenditure.

Several other allegations of the commission of major and minor corrupt practices and illegal practices have been made in the petition.

In his written statement respondent No. 1 admitted that the petitioner's nomination papers had been rejected by the Returning Officer but denied that it had been improperly rejected and also denied that it had materially affected the result of the election. It was alleged that the petitioner was not at all serious about his election and he had no chances of success. The respondent No. 1 denied having committed any of the major or minor corrupt practices or illegal practices as alleged in the petition. It was averred that the petitioner had no right to submit the petition on the grounds of commission of corrupt and illegal practices because he was not an elector in the Sironj constituency nor was he a candidate at the election.

On 11-11-54 the following seventeen issues were struck on the pleadings of the parties:—

1. Whether the petitioner is not entitled to present the election petition on grounds of corrupt and illegal practices.

2. Whether the petitioner's nomination was improperly rejected and the rejection has materially affected the result of the election.

3. Whether the petitioner having been a member of the Regional Transport Authority for Udaipur-Kotah at the time of his nomination held an office of profit within the meaning of Section 7 of the Representation of People Act and Article 191 of the Constitution of India, and as such was disqualified to stand as a candidate.

4. A. Whether Shri M. L. Mehta, S. P. was transferred from Bundi to Kotah in July, 1953, at the instance of respondent No. 1 to procure for his assistance in the furtherance of his prospects in the election.

B. If so, what is the effect on the result of the election.

5. A. Whether Shri M. L. Mehra, S. P. at the instance of respondent No. 1 or with his connivance transferred subordinate police officers as detailed in Schedule 1(a) in order to procure assistance for the furtherance of the prospects of respondent No. 1 in the bye-election.

B. If so, what is the effect on the result of the election.

6. A. Whether Shri Shivaraj Singh, S. I. was transferred from Jaipal to Sironj at the instance of respondent No. 1 and the former intimidated voters in favour of respondent No. 1 by arresting prominent workers of the Socialist and the Hindu Maha Sabha Parties three or four days before the polling day and by disturbing a meeting of these parties that was being held before the polling day.

B. If so, what is the effect on the result of the election.

7. A. Whether Shri Bakshi, Executive Engineer, Irrigation at Bundi, toured the constituency at the instance of respondent No. 1 towards the end of September, and beginning of October, 1953, in order to further the prospects of respondent No. 1 in the bye-election.

B. If so, what is the effect on the result of the election.

8. A. Whether Shri Gajanand Jha Dy. Inspector of Schools, Kotah, asked teachers at Sironj and Lateri in the third week of October, and second week of November respectively to secure votes for respondent No. 1.

B. If so, what is the effect on the result of the election.

9. A. Whether Shri Hari Singh, Chief Panchayat Officer aided by Shri M. L. Bhayya, District Panchayat Officer, Kotah, at the instance of respondent No. 1 asked Panches of the Sironj Sub. Division at Sironj between the 5th and 12th August 1953, to secure votes for respondent No. 1.

B. If so, what is the effect on the result of the election.

10. A. Whether Shri Hafizur-Rahman, leader of Jamiat-Ulma, Delhi, exercised undue influence on the Muslim voters at Sironj on the 10th and 11th November, 1953, by telling them that Islam was in danger if Muslims did not vote for the Congress and that Muslims will incur displeasure of God if they did not side with their saviours.

B. If so, what is the effect on the result of the election.

11. A. Whether His Highness the Nawab Sahib, Tonk, exercised undue influence on the Muslim voters at Sironj and Lateri between the 10th and the 15th November 1953 by exhorting them in the name of the holy Quran to vote for the Congress and by telling them that if they did not support the party which was saving their lives, they would have to go to hell.

B. If so, what is the effect on the result of the election.

12. A. Whether the polling at Raoji Ka Bagh (Haveli) Polling Booth, where the female voters were to cast their votes was purposely delayed at the instance of respondent No. 1 for nearly three hours with the result that a large number of female voters who wanted to cast their votes against the Congress had to return without being able to vote.

B. If so, whether this delay materially affected the result of the election.

13. A. Whether the polling was delayed for about 1½ hours at the instance of the agents of respondent No. 1 by the Presiding Officer, Shri Abid Ali Shah of a Polling Booth at Lateri in order to prevent Anti-Congress voters from casting their votes.

B. If so, whether this act materially affected the result of the election.

14. A. Whether the Ministers of the Rajasthan Government accompanied by respondent No. 1 toured the constituency on the following dates in State cars with the national flag flying:—

- (1) Shri Mohan Lal Sukhadia—Between 11th & 13th, Oct, '53.
- (2) Shri Chandan Mal Vaidya—Between 5th & 7th Oct. '53.
- (3) Shri A. L. Yadava—On the 5th & 6th Nov. '53.
- (4) Shri Kumbha Ram Arya—Between 10th & 15th Nov. '53.
- (5) Shri Jai Narain Vyas, accompanied by the Collector and Commissioner—Between 12th & 14th Nov. '53.

B. If so, whether these acts amounted to the procuring of assistance by a candidate for the furtherance of his prospects in the bye-election within the meaning of sub-section (VIII) of Section 123 of the Act.

15. A. Whether respondent No. 1 fed about 400 workers during the election and the expenses of their feeding have not been shown in the return of election expenses filed by him.

B. If so, what is the effect on the result of the election.

16. A. Whether 4 Community Kitchens at Sironj, and one each at Deepua Kharg, Anantpura, Ghatal, Lateri and Unarsital, were started by respondent No. 1 to feed his workers numbering in all about 400 and these expenses should have been included in the return of election expenses filed by the respondent.

B. Whether the travelling allowances were paid by the respondent to his workers of which the list has been filed by the petitioner and these expenses should have been shown in the return of election expenses.

C. Whether the allegations embodied in sub-issues (A) and (B) above, being based on further particulars supplied by the petitioner from time to time could not have been entertained under the law and the aforesaid sub-issues therefore, do not arise.

17. Whether the allegations embodied in issues Nos. 4, 5, 6, 7, 8, 9, 10 and 13 in so far as they are based on further particulars supplied by the petitioner from time to time could not have been entertained under the law and issues to that extent have to be struck off.

Issues Nos. 1, 16(c) and 17 were preliminary issues and were disposed of by the Tribunal on 4-4-1955.

I propose to discuss Issues Nos. 2, 15, and 16 and 7 first.

#### Issue No. 2.—

This is one of the issues on which lengthy arguments were addressed by both the parties. In order to appreciate the position it is necessary to state the following details. The petitioner was enrolled as a voter in the Ladpura constituency of Kotah District. The date of filing the nomination paper was the 5th October, 1953. The petitioner got a certified copy of the entry relating to him from the electoral roll of Ladpura constituency on the 1st October, 1953. The entry of the

copy which he obtained was that of the 1951 electoral roll. The 1951 electoral roll was the preliminary roll which was prepared for the first time under the Act before the General Elections. In the ordinary course a new electoral roll should have been prepared in 1952 and should have come into force with effect from the 1st October, 1952. But this was not done and, therefore, under Sec. 24(2) of the Representation of People Act, 1950, the 1951 electoral roll remained in force until the 17th of September, 1953, the date on which the electoral roll prepared in 1952 was according to the information contained in a letter of the Chief Electoral Officer finally published. The 1952 electoral roll should have remained in force until the 30th day of September, 1953 and a fresh roll prepared in 1953, should have come into force on the 1st of October, 1953. But no fresh electoral roll was prepared nor published thereafter on or before the date fixed for filing nominations. Therefore, the 1952 electoral roll continued to be in force on the date fixed for filing nominations for this bye-election viz. the 5th of October, 1953.

The petitioner's case is that the electoral roll prepared in 1952 for Ladpura constituency came into force on the 1st day of October, 1953 and that the previous or the 1951 Roll remained in force upto the end of September, 1953. Since the 1952 Roll had come into force only five days before the date fixed for filing nominations, the petitioner was given a certified copy of the entry relating to him of the wrong electoral roll namely the 1951 Roll. The petitioner discovered this mistake on the 5th of October, 1953 at the time of filing his nomination papers at Sironj. He filed four nomination papers. In three such nomination papers he entered the S. No. in Column No. 8 which was assigned to him in the 1951 electoral roll and mentioned the year of the electoral roll also as 1951. In the fourth nomination paper although the S. No. entered in column No. 8 was the same assigned to him in 1951, but he did not state that it was the 1951 S. No. Before the date of the scrutiny, the petitioner obtained a certified copy of the entry of the correct 1952 electoral roll of the Ladpura constituency, relating to him. At the time of the scrutiny of his nomination papers, the petitioner produced it before the Returning Officer with an application praying that he may be allowed to correct the entry in column No. 8 relating to his electoral roll number.

The respondent No. 1 took objection and thereupon the Returning Officer rejected the nomination paper and passed the following order:—

"This is a fact that Shri Abhinna Hari has filled in column No. 8 of the Nomination paper wrongly and any correction would have been allowed as to the entries at the time of presenting his nomination by the Returning Officer under Section 33(5) (A) of the Representation of the People Act, 1951. He wants to have corrected this entry at the time of scrutiny. He has quoted no provision of law nor I have come across any under which any correction of Nomination paper can be allowed at this stage. Even if this candidate would have been allowed to correct his nomination paper at the time of presenting it before me he could not have corrected his nomination paper in time. This mistake came to his notice the very day and he tried to improve over his previous nomination papers by giving serial numbers of the proposer and seconder according to Electoral Roll of 1952. I, therefore, hold that this mistake of filling serial number in column 8 from the electoral rolls not in operation is a substantial defect. Every man of ordinary prudence knew that the Electoral Rolls 1952 have been finally published and have come in force. This nomination paper is, therefore, rejected."

The objection of the respondent before the Returning Officer was that correction in the serial number could not be allowed at that stage and that the wrong entry of serial number in column No. 8 of the nomination paper was a defect of a substantial character and, therefore, the nomination papers of the petitioner deserved to be rejected. But neither the identity nor the eligibility of the petitioner was questioned. Even in his written statement the respondent has not questioned either the identity or the eligibility of the petitioner. Under Section 36(7) (A), it is provided that the production of certified copy of an entry made in the electoral roll of any constituency, shall be conclusive evidence of the right of any elector named in that entry to stand for election etc. It may also be noted that the petitioner had been a popular minister in the integrating Kotah State and had also been a Cabinet Minister in the former Rajasthan State. He had also been President of the District Congress Committee for Kotah District. Since he was a well-known person, it is not difficult to understand that his identity with the description given in the certified copy of the entry of the 1952 Ladpura constituency Roll produced by him, was not questioned.



We agree with the Returning Officer that at the time of the scrutiny no corrections could be permitted under Proviso A and B to Sub-section 5 of Section 33 of the 1951 Act in column Number 8 of the nomination paper. This is because such corrections can be allowed by the Returning Officer at the presentation stage.

In A.I.R. 1954 Supreme Court 510 at Page 513 Col. 1, Para 15 the Supreme Court has laid down that at the scrutiny stage the Returning Officer has no jurisdiction to permit defects in the nomination papers to be remedied. The reason given is that at the time of the presentation of the nomination paper the Returning Officer has to satisfy himself that the names and the electoral roll Nos. of the candidate and his proposer and seconder as entered in the nomination papers are the same as those entered in the electoral roll.

Section 33(1) requires that a nomination paper has to be completed in the prescribed form. The form is prescribed by rule 4 of the 1951 Rules and is given in Schedule II of the said Rules. It is, therefore, a requirement of law that the nomination paper shall be completed in the prescribed form and the Returning Officer has to satisfy himself that it has been so completed at the time of its presentation. Therefore, at the later stage of scrutiny, any defect in the completion of the nomination paper cannot be allowed to be remedied by the Returning Officer. But the duty of the Returning Officer does not end there.

The Supreme Court has in that case, further laid down that at the scrutiny stage, if it is found that the nomination paper of any candidate has not been completed in the prescribed form and is defective, it is his duty to decide, if necessary, after a summary inquiry, whether the defect is a mere technical one of a non-substantial character or otherwise. If he finds that the defect is a technical one of a non-substantial character, he should not reject the nomination paper, as sub-clause IV of Section 36 provides that the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character.

The next question that poses for determination, therefore, is whether the wrong entry in column No. 8 of the nomination paper of the petitioner relating to serial number in the electoral roll, was mere technical defect of a non-substantial character or a defect of a substantial character.

Section 33(1) of the 1951 Act provides:—

**33. PRESENTATION OF NOMINATION PAPER AND REQUIREMENTS FOR A VALID NOMINATION.**—(1) On or before a date appointed under clause A of Section 30 each candidate shall, either in person or by his proposer and seconder, between the hours of eleven O'clock in the forenoon and three O'clock in the afternoon deliver to the Returning Officer at the place specified in this behalf in the notice issued under Sec. 31 a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two persons referred to in sub-section 2 as proposer and seconder.

The form for filing a nomination paper is prescribed by Rule 4 of the Rules made under the 1951 Act:—

Rule 4 reads as under:—

**4. FORM OF NOMINATION PAPER.**—Every nomination paper delivered under Sub-section 1 of Section 33 or under that Sub-section read with Sub-section 4 of Section 39 shall be completed in the form specified in Schedule II.

It will thus be seen that both under Section 33 Sub Clause 1 and Rule 4 the words used are "shall". It is, therefore, the duty of the candidate to deliver to the Returning Officer a nomination paper completed in the form prescribed by Rule 4 of the Rules made under the 1951 Act and specified in Schedule II of the said rules, and, therefore, any defect even of a technical nature cannot be said to be of a non-substantial character. It was argued that the entry of the wrong serial number in column No. 8 by the petitioner in his nomination papers may be a technical defect but it is not of a non-substantial character. The law requires meticulous accuracy in filling the prescribed form of the nomination paper and any defect in the non-compliance with the mandatory provisions of law even though the defect be technical cannot be said to be of a non-substantial character. This argument has considerable force in it and if there were no provisions relaxing these mandatory provisions of law in favour of entries relating to name and

S. Nos. of the candidate and his proposer and seconder, we should be inclined to accept this view. But Section 36 Sub Clause 4 reads as under:—

"The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character."

Further Sub Clause 2 of Section 36 provides:—

"That the Returning Officer shall then (at the time of scrutiny of the nomination paper) examine the nomination papers and shall decide all objections, which may be made to any nomination, and may, either on such objections or on his own motion, after such summary inquiry, if any, as he thinks necessary refuse any nomination paper on any of the following grounds,

(d) That there has been any failure to comply with any of the provisions of Section 33 or Section 34.

It will thus be seen that at the scrutiny stage it is the duty of the Returning Officer under Section 36 Sub Clause 2, if a defect is pointed out to him or noticed by him in the nomination paper, to hold an inquiry which has to be of a summary nature and thereafter refuse any nomination paper on the ground that there has been a failure to comply with any of the provisions of Section 33. But his duty does not end there. His further duty, under sub-clause 4 of Section 36, is that he shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character. It cannot, therefore, be said that just because there has been a failure to comply with any of the provisions of Section 33, as in the present case, the Returning Officer can reject the nomination paper.

In the present case, by making a wrong entry relating to his serial number in the electoral roll, the petitioner failed to comply with the provisions of Section 33 read with Rule 4 of the Rules made under the 1951 Act. But merely because of this failure to comply with the provisions of the law the Returning Officer could not reject the nomination paper, it was his duty to hold a summary inquiry to satisfy himself whether the candidate was in fact enrolled as a voter and was qualified for membership of the Legislative Assembly or not. Of course, he could not at the scrutiny stage hold a lengthy inquiry.

The only function of the electoral roll number required to be given in column No. 8 of the candidate is that the Returning Officer may be easily able to trace out the entry relating to the candidate in the electoral roll, to satisfy himself whether the candidate was or was not enrolled or was or was not qualified. In the present case it is an admitted fact that the candidate produced a certified copy of the entry in the correct electoral roll of Ladpura constituency relating to him. Under Section 36 Sub-section 7(A) the production of a certified copy of an entry made in the electoral roll of any constituency is a conclusive evidence of the right of the elector named in that entry to stand for election etc. Therefore, if the Returning Officer had discharged his duties prescribed by Sub-section 2 of Section 36 and made a summary inquiry by just caring to look into the certified copy of the entry, he could find out that the name of the petitioner was entered in the correct electoral roll. But the Returning Officer failed in his duty to do so. Had a certified copy of the entry made in the correct electoral roll of the Ladpura constituency not been produced by the petitioner at the scrutiny stage for the examination and the satisfaction of the Returning Officer that he was enrolled as a voter in the electoral roll of Ladpura constituency, the defect in his nomination paper relating to the electoral roll number in column No. 8 of the nomination paper would have been, though technical, but of a substantial character. Because the Returning Officer, in that case, could not without holding a lengthy inquiry find out whether or not the petitioner was enrolled in the correct electoral roll of Ladpura constituency. He had no duty to examine the whole list of Ladpura constituency and hold a lengthy inquiry to discover this fact as to whether or not the petitioner was enrolled. He could in that case have been justified in rejecting the nomination paper on account of the technical defect of giving a wrong electoral roll number in column No. 8 of the nomination paper as the defect would have been of substantial character. But in the present case since the petitioner was present and made a certified copy of the entry relating to him in the electoral roll readily available to the Returning Officer at the time of the scrutiny of his nomination papers, it cannot be said that the Returning Officer could have experienced any difficulty in finding out that the petitioner was duly enrolled. Therefore, defect in the nomination paper lost its substantial character.

A very large number of authorities have been cited by the parties on this point, both for and against.

In *Pran Lal Thakur Lal Munshi Vs. Indu Bhai Bhai Lal Bhai Ameer* and others reported in 1 E.L.R. 182 the petitioner Shri Pran Lal Thakur Lal Munshi, a Congress candidate for a seat in the House of the People from Baroda West

constituency delivered two nomination papers and in both of them omitted to fill in his age in column IV of the nomination paper. The Returning Officer held that it was a vital defect in the nomination paper and not merely technical and rejected the paper. It was argued that since serial number of the petitioner in the electoral roll had been correctly mentioned in column No 8 of the nomination paper, on a summary inquiry, the Returning Officer could find out the age of the petitioners because in the electoral roll the age of the petitioner was given as 64 years. It was argued that, therefore, the omission to make any entry in column No IV of the nomination paper relating to age was only a technical defect and since on a summary inquiry the age could be ascertained by the Returning Officer the defect was of a non-substantial character. Therefore, the rejection of the petitioner's nomination paper was improper. This argument was not accepted by the Tribunal in that case. The reason is that unlike the electoral roll number the age of a candidate is one of the essential qualifications for membership of the House of the People. A defect of this character goes to the very root. That case is, therefore, clearly distinguishable.

It may further be observed that under Section 33 Sub Clause 5(a) and (b) the Returning Officer can permit any clerical error in the nomination paper in regard to the name and electoral roll numbers of the candidate, the proposer and the seconder and where necessary can direct any clerical or printing error in the entrance in the nomination papers relating to the name and electoral roll numbers to be overlooked. But no such permission to correct or direction to overlook any clerical or printing errors relating to other columns of nomination paper can be given by the Returning Officer. This further shows that the Legislature was prepared to relax the requirements of the law for completing the nomination paper in the prescribed form in respect of errors in the name and electoral roll number only, but not in respect of defects in other columns including the column No IV in respect of the age of the candidate. This further shows that same footing a defect in the entry relating to name and electoral roll numbers.

The next case cited is that of P. H. Balasubramanian Vs C. R. Narasimban and others reported in 1 E.L.R. 461. That case is also distinguishable because on the crucial date namely the date fixed for the filing of nomination papers the petitioner was not enrolled as a voter in any constituency. In that case the petitioner had left the entry relating to his electoral roll number in column No 8 of his nomination paper blank. The reason for leaving it blank was that upto the date of filing the nomination paper no electoral roll number had been assigned to him. Under these circumstances, it was held that the defect was not a technical one nor of a non-substantial character. And it was observed —

“While the giving of a wrong number may possibly, under given circumstances, be a mere irregularity which can be cured by correction, it is difficult to see how the omission to give any number at all can be condoned or can be treated as surplusage, or a mere matter of form and not a statutory requirement.”

In *Badrududja Syed Vs Mohammad Khoda Buksh and others* reported in 2 E.L.R. 189, the defect was in columns Nos 7 and 8 of the nomination papers of the petitioner. The petitioner was a candidate for a seat in the House of the People from Murshidabad parliamentary constituency. Instead of giving in his nomination paper his electoral roll number and constituency for the Murshidabad parliamentary constituency the petitioner gave the name and the electoral roll No. of the Assembly constituency where he was registered. It was argued that the electoral rolls for the parliamentary constituencies are, as a rule, not prepared separately, but the electoral rolls prepared for the assembly constituencies within a parliamentary constituency are consolidated and made into the electoral roll for that parliamentary constituency. That, therefore, the defect was only of a technical and non-substantial character, but this argument was not accepted because although that may be so but there was nothing in law at that time to prevent the electoral Registration Officer from preparing separate electoral rolls for a parliamentary constituency and even during consolidation the possibility of creeping in some differences in the two rolls could not be excluded. The defect was held to be not of a technical nor of a non-substantial character as it affected his qualification. That is a clearly distinguishable case and the principle laid down there cannot be applied to the present case.

In 4 E.L.R. 112 *Rameshwar Parshad Singh Vs Krishna Gopal Das and others* the petitioner had omitted to mention along with his electoral roll No. in column No 8 of the nomination paper the name of the village. It is necessary according to footnote 6 of the form prescribed for filling nomination papers to give a description of the part in which the name of the persons concerned appears along with the electoral roll number, where the electoral roll is sub-divided into parts

and separate serial numbers are assigned to the electors, entered in each part. In that case, there were 400 to 500 villages in the constituency and each village had a separate electoral roll and a separate set of serial numbers. The non-mention of the name of the village was a technical defect but it was held to be of a substantial character as on the occasion of the scrutiny no one was present to point out the name of the particular village to which the petitioner's electoral roll number as mentioned in column No. 8 of the nomination paper related. In the absence of such assistance at the time of the scrutiny the Returning Officer could not, on a summary inquiry, trace out the name of the petitioner on the electoral roll. To trace out the name it would have been necessary for the Returning Officer to make a lengthy inquiry and go through lists of 400 or 500 villages. The non-compliance with the directions given in footnote 6 of the nomination paper form was, under these circumstances, held to be of a substantial character. That case is, therefore, clearly distinguishable from the present one. As in the present case no such elaborate inquiry was necessary and the petitioner was present and had produced the certified copy of the entry at the time of the scrutiny.

In 4 E.L.R. 309 Nao Ratan Singh Vs. Desh Raj and others the Chairman dissenting, the Patiala Election Tribunal held, that the complete omission to enter the name of the proposer in column No. 9 of the nomination paper was not a mere technical defect of a non-substantial character but was a substantial defect. It further held that the mere fact that the name of the proposer given could be ascertained from the signatures of the proposer subscribed on the nomination paper and his electoral roll number as given in the nomination paper was not material and could not cure the defect of the total omission of the name from the appropriate column. The argument was that when column No. 9 had been left blank there was nothing left in the appropriate column of the nomination paper for the Returning Officer to compare the name as entered in the electoral roll of the constituency and, therefore, the Returning Officer could not comply with the requirements of sub-section 33 of the Act. The Chairman of the Tribunal did not, however, agree with this view. In his opinion, even total omission of the name of the proposer in column No. 9 was after all a mere technical defect of a non-substantial character because it could be ascertained without difficulty on a summary inquiry from the electoral roll number and the signatures subscribed by the proposer on the nomination paper itself. We are inclined to agree with the view taken by the Chairman of the Tribunal in that case.

In 7 E.L.R. 135 Moti Ram Vs. Ram Chander Chowdhrey and others the Bikaner Tribunal held that where there were two rolls for the same area one original and another supplementary and the petitioner had failed to mention in column No. 10 whether the electoral roll number entered referred to the original or the supplementary roll the defect was of a substantial character. In that case, it may be pointed out that, the attention of the Returning Officer was not drawn at the time of the scrutiny of the nomination paper to the fact that there were two rolls and that the electoral roll number entered in column No. 10 of the nomination paper referred to the supplementary roll. That case is, therefore, clearly distinguishable.

In 7 E.L.R. 496 Bala Subrahmanyam Vs. Election Tribunal, Vellore and others, the Madras High Court found that the omission of the electoral roll number from column No. 8 of the nomination paper was, under the circumstances of that case, not a mere technical defect of a non-substantial character. The other facts were that the name of the constituency had also been omitted. It was observed:—

“Without these particulars the Returning Officer could not decide whether a candidate is or is not qualified.”

The force of these observations, appear to me to apply to the defect of the omission of the name of the constituency and not to the omission of the electoral roll number as the main point which was under consideration of that Hon'ble Court was the omission of the name of the constituency and not the omission of the electoral roll number. As the defect in column No. 8 was accompanied, in that case, by other serious defects of a substantial character, it lost its importance. It would be unsafe, therefore, to apply the same principle to the present case where the defect in electoral roll number is not accompanied by any other defect.

It may, however, be pointed out that in that case further defect was that on the crucial date *viz.* the date fixed for filing nomination papers, the petitioner had not been enrolled as a voter. He was enrolled subsequently but before the date fixed for the scrutiny of the nomination papers. The decision in that case rested mainly on the ground that the petitioner's name was not on the roll of any Parliamentary constituency on the date fixed for filing the nomination paper and he was, therefore, not a qualified candidate.

In the case of Ranchhod Lal, Lella Dhar Vayeda Vs. Election Tribunal, Ahmedabad reported in 8 E.L.R. 59 the facts were that the Election Tribunal had passed the orders for including the petitioner's name in the Electoral Roll on the 23rd of November 1952, but this fact was not known to the candidate nor to his proposer nor to his seconder on the 24th of November, 1952 when the nomination paper was filed. Column No. 8 had, therefore, to be left blank and entry regarding the electoral roll number of the candidate could not be made. The election Tribunal held that the nomination was not valid because the proposer and the seconder had no knowledge on the date of the nomination that the candidate was qualified to be chosen as member and there was a non-compliance of Section 33(2). Although the Bombay High Court did not interfere in this case but it did make the following observations on the arguments of the Tribunal regarding the knowledge of the proposer and seconder at the time of filing the nomination papers:—

"There is no doubt, with respect to the Tribunal, that the argument is wholly bad, yet somehow it seemed to have appealed to them."

Further observations made by C. J. Chagla who delivered the judgment of the court are:—

"Again Mr. Patel is right when he stresses the point that it is not every non-compliance with Section 33 which entitles the Returning Officer to reject the nomination paper. There is a mandatory provision that he shall not reject a nomination paper if the defect is technical and not of a substantial character. Now, if we were a court of Appeal or we were deciding the election petition, very likely we would have found it very difficult to take the view that the non-compliance on the part of the petitioner was of a substantial character."

Further it was observed:—

"We regret to say that in this particular case the Tribunal had not taken into consideration the most relevant provisions of the Act or at least they do not show in their judgment that they have taken these provisions into consideration. We would have expected a careful consideration of the provisions of section 36(4) and a proper reasoning as to why the non-compliance of Section 36(4) was of a substantial character and not of a technical character."

It will thus be seen that although the High Court did not interfere with the decision of the tribunal for other considerations but it did not approve of the finding nor the reasons for the finding given by the tribunal, that the total omission from column No. 8 of the nomination paper of the Electoral Roll number of the candidate was not a technical defect of a non-substantial character.

The reason is that this omission was a non-compliance of the provisions of section 33 of the Act did not appeal, because section 36(2)(4) and section 36(4) relax the strict requirements of section 33.

In Harnam Singh Vs. Jawala Parsad and others reported in 8 E.L.R. 333, the facts were that Electoral Roll number of the seconder was wrongly shown as Number 3—Ward No. 13 of Ajmer City, whereas his Electoral Roll No. was 3 of Ward No. 18 of Ajmer City. The Ajmer Tribunal held that the defect was of a substantial character and the Returning Officer had rightly rejected the nomination paper. The facts, in that case, were that Ajmer City was divided into 32 wards. Each Ward had a separate Electoral Roll with independent serial numbers. At the time of the scrutiny no one pointed out the Ward in which the petitioner was enrolled. Without such assistance at the time of scrutiny, the Returning Officer could not ascertain without making a lengthy enquiry and examining as many as 32 Electoral Rolls whether or not the petitioner was enrolled. Therefore the non-compliance with the direction given in footnote 6 of the nomination form which is No. 4 of Schedule II was held to be of a substantial character.

In 1 E.L.R. 252 Teekram Sharma Vs. Lalit Bahadur Kharga and others the facts were that there was a non-compliance of the directions given in footnote 6 of the nomination form as prescribed by Section 33 read with Rule 4 of the Rules made under the 1951 Act, in that the petitioner did not mention the parts of the sub-division of the Electoral Roll in which the names of the candidate, the proposer and the seconder appeared. The Returning Officer rejected the nomination paper because of this defect. At the time of the filing of the nomination paper the Returning Officer had with the help of the members of his staff actually found out the parts in which the petitioner and his proposer and seconder were

enrolled. Under these circumstances it was held that the Returning Officer wrongly rejected the nomination paper and the defect was only technical and of a non-substantial character.

In *Rajaa Krishan Reddi Vs. Kamla Devi*, 5 E.L.R. 173 the petitioner had not mentioned his electoral roll number in the nomination paper because the petitioner's name in the electoral roll had been included on the very day fixed for the filling of the nomination and the petitioner did not know his electoral roll number when he filed the nomination paper. It was held:—

“That it will be presumed that the petitioner's name had been included on that day before the expiry of the time fixed for filing nominations and that the absence of the electoral roll number from the appropriate column of nomination paper was only a technical defect of non-substantial character.”

Much stress was laid upon the case of *Ratan Anmol Singh Vs. Chowdhrey Atma Ram* reported in A.I.R. 1954 Supreme Court 510. The defect in the nomination paper in that case related to columns 12 and 16. Section 33(1) prescribes that the nomination paper shall be subscribed by two persons referred to in sub-section 2 as proposer and seconder. Rule 2(2) of the Rules made under the 1951 Act prescribes that an illiterate person shall be deemed to have signed an instrument or other paper if he placed a mark in the presence of the Returning Officer and such officer on being satisfied as to his identity attested the mark. In that case the proposer and the seconder were illiterate and put their marks instead of subscribing signatures in columns 12 and 16 respectively of the nomination paper. It was held that it was a substantial defect and not a mere technicality. The principle laid down in that case is:—

“When the law enjoins the observance of a particular formality it cannot be disregarded and the substance of the thing must be there. The substance of the matter here is the satisfaction of the Returning Officer at a particular moment of time about the identity of the person making a mark in place of writing a signature. If the Returning Officer had omitted the attestation because of some slip on his part and it could be proved that he was satisfied at the proper time, the matter might be different because the element of his satisfaction at the proper time, which is of the essence would be there, and the omission formally to record the satisfaction would probably in a case like that be regarded as an unsubstantial technicality.”

In the present case the defect is in Col. No. 8 of the nomination paper about the electoral roll No. only. Under section 33 (1) the law enjoins that the electoral Roll No. of the candidate shall be entered in Col. No. 8. But the point is what is the substance of the matter in a case of this nature. In my opinion the substance of the matter in the case of defect in Col. 8 is the satisfaction of the Returning Officer at the essential time that the candidate was in fact enrolled as a voter in the electoral roll. Mere incorrect entry of the electoral roll No would not be the essence of the matter it would only be the outward form. In the present case it is not disputed that both at the time of the presentation and the scrutiny the Returning Officer was satisfied about the petitioner being an enrolled voter in Ladpura constituency.

Although it has not been argued but it may be mentioned that the satisfaction of the Returning Officer at the presentation stage may not have been on the correct basis probably it was on the basis of the certified copy of the 1951 Roll. Had there been no such satisfaction he would have given directions to the petitioner under section 33(5) (ii). Basis of satisfaction would not matter when in fact at the crucial time the petitioner was enrolled as a voter in the correct roll and when on objections he satisfied the Returning Officer at the scrutiny stage that he was so enrolled. Even on applying the test laid down in *Ratan Anmol Singh's* case I am of the opinion that the defect in the present case is merely technical and of a non-substantial character.

The facts in *Karmel Singh's* case (10 E.L.R. 189) are much nearer the facts in the present case as the defect there was also in Col. No. 8 only. Details required under footnote 6 of the nomination paper form, although necessary, were not given. The result was the same. The Returning Officer had to hold a summarily inquiry to ascertain whether the candidate was in fact enrolled. The Supreme Court laid down in that case:—

“That the defect, under these circumstances, was a technical one and the tribunal was perfectly right in holding that the defect was not of a substantial character and that the nomination paper should not have been rejected.”

Under these circumstances, we have no hesitation in holding that the petitioner's nomination papers were improperly rejected.

Section 100(1)(C) reads:—

"If the tribunal is of opinion—

(C) that the result of the election has been materially affected by improper acceptance or rejection of any nomination, the tribunal shall declare the election to be wholly void."

It was argued that from a bare reading of this provision of law it appears that petitioner has not only to prove that his nomination was improperly rejected but he has further to prove that such improper rejection materially affected the result of the election.

It was further argued that although the consensus of opinion in the past had been that improper rejection of a nomination paper of a candidate raises a presumption that the result of the election has been materially affected, but a recent decision of the Supreme Court reported in A.I.R. 1954 Supreme Court 513 has changed the position. The Supreme Court laid down in that case:—

"This section indicates that an election is not to be declared invalid if it appears to the Tribunal that non-compliance with statutory rules or any mistake in the use of such forms did not affect the result of the election. This throws the onus on the person who seeks to uphold the election. The language of section 100(1)(c), however, clearly places a burden upon the objector to substantiate the objection that the result of the election has been materially affected. On the contrary under the English Act the burden is placed upon the respondent to show the negative viz., that the result of the decision has not been affected."

It was pointed out that that case is clearly distinguishable because the question for consideration before the Supreme Court in that case was not of improper rejection of a nomination paper but that of an improper acceptance. Improper acceptance and improper rejection do not stand on the same footing. By the mere fact that a nomination paper of a candidate has been improperly rejected a valuable right given by the Legislature is denied to the candidate by the Returning Officer. Further if the same criteria was applied to the case of improper rejection of a nomination it would lead to absurd results because only a fact that exists or has existed can be proved. A mental state of a person that existed at a particular time can be proved or inferred from his previous or subsequent conduct and the possible motives and the circumstances of the case. But in the case of improper rejection the voters are never called upon to consider the rejected candidate and therefore it cannot be said how they would have reacted had the candidate been allowed to contest. The voters who do not belong to any particular party are not likely to finally make up their mind in favour of one candidate or the other before the time of the scrutiny and the final publication of the names of the contesting candidates after scrutiny. Even a party voter would change his views at any time before he actually casts his vote. Necessarily, therefore the evidence that could be given as to how the voters would have reacted if an improperly rejected candidate had contested the election was bound to be of a speculative nature. If this view of law was adopted it would lead to putting an interpretation on Section 100(1)(c) which would destroy rather than uphold this provision of law.

The judgment in A.I.R. 1954 Supreme Court 513 is dated May 20, 1954. The judgment of the Court in that case was delivered by the Hon'ble Justice Shri Gulam Hussain and the other judges were Hon'ble C. J. Shri S. R. Dass (then justice) and Hon'ble Justice Shri Jagannath Dass.

Karnel Singh Vs. Election Tribunal, Hissar and others, reported in 10 E.L.R. 189 is a case of improper rejection. The judgment in that case was given by a Constitution Bench of Supreme Court consisting of the Hon'ble C. J. Shri M. G. Mahajan, Late Hon'ble C. J. Shri Mukerji (then justice), the Hon'ble C. J. Shri S. R. Dass (then justice) and the Hon'ble justice Shri Vivynn Bose and the Hon'ble Justice Shri Gulam Hussain. The Judgment of the court in that case was delivered by The Hon'ble C. J. Shri M. G. Mahajan and is dated Sept. 22, 1954. In that case it was laid down by the Supreme Court:—

"The only defect pointed out was that the name of the sub-division was not stated therein, but on the evidence it was quite clear that there was no difficulty in identifying the candidate and the candidate himself pointed out to the Returning Officer the entry of his name in the

electoral roll. The defect, in these circumstances, was a technical one and the Tribunal was perfectly right in holding that the difficulty was not of a substantial character and that the nomination paper should not have been rejected. The majority of the Tribunal, in these circumstances, were justified in their conclusion that the result of the election was affected by this wrong rejection of the nomination paper.

Mr. Chatterji for the appellant has not been able to persuade us to take a contrary view."

The only circumstances which were held to justify the conclusion that the result of the election was affected by this wrong rejection of nomination paper were that it had been rejected on account of a defect in filling column No. 8 of the nomination paper which was of a technical and non-substantial character. Therefore, the only conclusion that can be drawn from this decision is that proof of improper rejection justifies the conclusion that the result of election was materially affected. The order of the election Tribunal, Hissar against which the appeal was preferred in the Supreme Court is dated 16th May, 1953 and is reported in 6 E.L.R. 368. At page 378 it was observed by the Tribunal.

"I now come to the affect of improper rejection of Sher Singh's nomination paper on the result of the election of this constituency. It is not denied before me that the consensus of opinion has always been that if a nomination paper was improperly and wrongly been rejected then it materially affects the result of the election, meaning thereby that a presumption arises in favour of the election having been materially affected, if the nomination paper of any candidate is improperly rejected. But it cannot be denied that this presumption is rebuttable."

It will thus be seen that the view of the Tribunal was that a rebuttable presumption arises in case of improper rejection of a nomination that the result of the election had been materially affected. In the first place the view taken by the Supreme Court (in Karnal Singh Vs. Election Tribunal, Hissar) is different. It does not lay down that a rebuttable presumption arises in favour of the result having been materially affected by a wrongful rejection of the nomination paper. This is understandable if we refer to the observations of the Supreme Court in A.I.R. 1954 S.C. 513 at page 516:—

"The casting of vote at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or other of the candidates."

It appears from this that the Supreme Court has taken the view that it is impossible for the respondent to rebut a presumption which arises that the result of the election has been materially affected by an improper rejection of the nomination paper. The evidence if any that can be given can never be positive. It is bound to be of a speculative nature. When a nomination paper is rejected no occasion arises for the electors to consider the rejected candidate's candidature and, therefore, it would be impossible to give evidence about a fact which had not existed at all.

Shri Brij Sunder Sharma has not been able to give any evidence to rebut the presumption raised by the improper rejection of the petitioner's nomination paper. Shri Brij Sunder Sharma secured 8,892 votes and the Hindu Maha Sabha candidate secured 8,366 votes. Shri Brij Sunder Sharma lead by 526 votes only. All that Shri Brij Sunder Sharma and his witnesses have stated is that the petitioner had no personal influence within the Sironj constituency. But this cannot be believed because admittedly the petitioner had been a President of the District Congress Committee, Kotah and in that capacity must have had some contacts with some of the important members of the area. May be that all Congress members of the area were disciplined soldiers of the party and would not have helped him. May be some of them would not have cared for the discipline and would have supported his candidature. It is possible some of the independent voters who voted for the respondent No. 1 may have supported him. May be the respondent would have been able to maintain his present position and still got the highest votes. But it cannot be said that any positive evidence of a satisfactory nature has been led by Shri Brij Sunder Sharma to rebut the presumption that by this improper rejection of the nomination paper of the petitioner the result of the bye-election has not been materially affected.



We, therefore, hold that the nomination paper of the petitioner Shri Abbhina Hari was improperly rejected by the Returning Officer and further that the result of the election has been materially affected by such improper rejection, and that, therefore, the bye-election in question deserves to be declared wholly void under Section 100(c) of the Representation of the Peoples Act, 1951.

Issue Nos. 15 & 16 A—

Both these issues are based up on the allegations contained in paragraph No. 17 of the petition and particulars given in Schedule III. The allegation is that respondent No. 1 has submitted a false account of his election expenses and has deliberately withheld certain expenditure which was incurred. The expenditure of respondent No. 1 was much more than the prescribed one. The particulars given in schedule III are—

- (1) No expenses were shown about the food charges of the workers which were numbering about 400 and which were fed by respondent No. 1 by starting community kitchens at a number of places including Sironj and Lateri.
- (2) Travelling allowance for the wife of respondent No. 1 and other workers who went from distance places to work for respondent No. 1 have not been shown.

There were two more particulars but they were given up at a later stage.

In his written statement respondent No. 1 denied the allegations contained in paragraph No. 17. It was averred that the account of election expenses was correctly submitted. Every expenditure was shown and no expenditure was withheld and the expenditure incurred was within the prescribed limits. The particulars given in Schedule III to the petition were denied. It was definitely denied that respondent No. 1 paid any feeding charges of his workers. It was averred that particulars were insufficient inasmuch as names of workers, names of places where community kitchens were opened and dates when they were fed are not given. It was alleged that respondent's wife went to look after the respondent and not in connection with the election. It was not definitely denied that no travelling expenses were paid by the respondent No. 1 to his workers but it was stated that the particulars given were vague inasmuch as the names of such persons etc. were not given.

Issue No. 15 and 16(a) are in respect of the non inclusion of the expenditure incurred in connection with the messing charges of the workers and opening of kitchens for them at various places including Sironj and Lateri.

Issue No. 16(b) is in respect of particulars in schedule III regard to non-inclusion of the expenditure on the travelling expenses of workers of respondent No. 1.

Issue Nos. 15 & 16(a)—

Sixteen witnesses have been examined by the petitioner in support of this issue. These witnesses include a number of congress workers of standing. Among the members of the Congress Party examined in support of these issues by the petitioner are P.W. 4 Shri Nemi Chand Jain, P.W. 6 Shri Kundan Mal Chopra, P.W. 7 Shri Laxmi Narain Azad and P.W. 8 Shri Rameshwar Dayal. P.W. 4 Shri Nemi Chand Jain, has deposed that he is a member of the Congress Party and a member of the Pradesh Congress Committee and he worked as the Polling Agent for respondent No. 1 at Muraria during the bye-election question. He went to Lateri on the 12th of November, 1953 in this connection. There we saw 30 to 36 congress workers which included Shri Bharion Prakash and Shri Kesri Mal Gangwal. Shri Bharion Prakash asked him to go to Muraria and he went the same evening to Muraria in a Jeep car arranged by Shri Bharion Prakash. At Lateri he took his evening meals at a mess which was managed by Bharion Prakash and run by the Congress Party for feeding Congress workers. One more worker was sent with him to Muraria. He stayed at Muraria till the 15th November, the date of the polling. Next day on the 16th November he went to Sironj. He took his meals at Sironj at a mess run by the Congress Party where two or three cooks were employed and where about 100 to 150 workers took their meals. He further stated that counting of votes was to take place on the 17th of November. In cross examination the witness deposed that although he had not seen the account of the mess nor was he aware as to who supplied the rations, as Shri Bharion Prakash asked him to take the meals at Lateri at the mess and told him to go to Muraria to work there and also informed him that a

jeep would come to take him to Muraria, he concluded that he (Shri Bharion Prakash) was Incharge of the Affairs there. The witness deposed that at Muraria he took his meals at some Sethji's house where he was taken in the jeep car by a person who accompanied him in the car. Since only congress workers took their meals at the mess at Sironj the witness concluded the the mess at Sironj was being run on behalf of the congress party. The witness could not say who was financing the mess at Sironj. The witness named several congress workers whom he saw taking their meals at the mess at Lateri and Sironj but they have not been examined. Only Shri Bharion Prakash has been examined as R.W. 18 by respondent No. 1.

R.W. 18 Shri Bharion Prakash states that he convassed for Shri Brij Sunder Sharma at Lateri Tehsil and toured the Tehsil in this connection. The party members used to serve him with food wherever he stayed. No mess was run at Lateri to feed the congress workers and that he did not manage any mess at Lateri and that Shri Bhanwar Lal was the only person who accompanied him. The other congress workers were local and used to take their food either at their own houses or with some body else but he did not know what arrangements they made. But the witness had not the courage to deny specifically that he sent P.W. 4 Shri Nemi Chand Jain to Muraria nor that he asked him to take his meals at Lateri nor could he specifically deny that Shri Nemi Chand was the polling agent of respondent No. 1 Shri Brij Sunder Sharma at Muraria. It is very difficult to believe that a member of the congress party who is also member of a Pradesh Congress Committee and who worked as Polling Agent of respondent No. 1 was giving false evidence against respondent No. 1 himself when in cross examination there is nothing to discredit his testimony and there is practically no evidence in rebuttal. The statement of P.W. 4 is further supported by the evidence of P.W. 6 and P.W. 7 who are both members of the congress party.

P.W. 6 Shri Kundan Mal Chopra is the Vice President of the Ladpura Tehsil Congress Committee. He went to Sironj twenty-five days before the polling day and remained there till the polling day at the request of the District Congress Committee, Kotah. According to him there were sixty to seventy workers at Sironj during this period. A mess was being run at Sironj for the workers as a Joint undertaking. One cook was engaged. But workers also used to help in cooking. He does not know who financed the meals.

There is then the evidence of Shri Laxmi Narain Azad. He was deputed to work for the congress candidate on the 11th afternoon at Bagroda. At Bagroda he made his own arrangements for cooking out of Rs. 25/- paid to him to meet his expenses by the District Congress Committee, Kotah and the feeding expenses of other workers at Bardoa were also met by him out of this amount. At Sironj the witness states that he took his meals at a general mess which had been arranged for the congress workers and he saw twelve or fifteen persons taking meals at the mess, when he took the meals there. In cross examination he deposed that it was Shri Rameshwar Dayal Secretary of the District Congress Committee who paid him the expenses both for the journey and for diet and other expenses. He also deposed that though he did not know the name of the agent who was Incharge of the mess at Sironj but it was a vakil of Kishorai Patan, in Bundi District, who managed it and there was one cook who used to cook and workers also used to help.

Shri Rameshwar Dayal Secretary of the Congress Committee was also examined by the petitioner as P.W. 8. This shows the faith which the petitioner had in the strength and genuineness of his allegation. The impression that I take from going through the whole of the statement of Shri Rameshwar Dayal is that he does not want to speak the whole truth and gives evasive answers. He admits that a formal appeal was made to all congress men to help the candidature of respondent No. 1 at the bye-election in question and a number of workers did go including himself. But he did not possess the list of such workers. He does not specifically deny that the District Congress Committee, Kotah of which he was the General Secretary did not incur any expenses in connection with this bye-election. All he says is that he could not find any record of accounts of such expenses. He further stated that it was the President of the District Congress Committee, Kotah who used to operate the accounts and the Office Secretary used to maintain the accounts and that he did not find any entries in the cash book in regard to the expenses paid. Nor was he aware of any financial help having been given by the District Congress Committee to the respondent No. 1 in the bye-election. He did not bring account books because no record containing entry relating to the financial help given by the District

Congress Committee to respondent No 1 was available in the office of the District Congress Committee. If any financial help had been given there should have been either a separate account of such expenditure or entries in the general cash book. There were no such entries and he could not find any separate account. When cross examined as to where he took his meals at Sironj his explanation was that he did so with some of his friends or relations and did not know where other congress workers took their meals.

The other important witness examined on this issue is P.W. 15. Shri Laxmi Narain, President of the Tehsil Congress Committee, Chhabra in Kotah District. He deposed that the President of the District Congress Committee, Kotah deputed him to work at Sironj in support of respondent No. 1. He reached Sironj on the 12th or 13th and was sent as polling agent of respondent No. 1, to Scmal Kehri polling station. At Sironj he saw about 60 congress workers in the congress office. He had no knowledge what arrangements were made for feeding the congress workers. But at Sironj he himself took his meals with Mr. Dhariwal at Ajmerwala Munji's Kothi. Although this witness has denied knowledge about the mess arrangements at Sironj and does not directly help the petitioner but it shows the type of witnesses the petitioner had the courage to produce for examination. Even such an important congress member and Agents could not specifically deny the allegations and all that he could say was that he did not know. May be because he actually did not know, may be he denied knowledge because the truth was inconvenient.

P.W. 13 Shri Kunwar Lall Jetha is a Congress M.L.A. in Rajasthan. He states that he went to Lateri and Shri Bharon Prakash was Incharge of the election office there. He further states that he went to Sironj but left the same day for Lateri and stated that he did not take his meals at Sironj as he was ill. May be he was telling the truth. May be he was trying to avoid the inconvenient question and being a member of the congress party, did not want to give evidence against the congress candidate the respondent No. 1.

There is then the testimony of Rajmal P.W. 15. He is an independent witness and is not a member of any political party. He gives the impression of being a truthful witness who was not exaggerating facts. He states that during the bye election in question a mess was run by the respondent Shri Brij Sunder Sharma and he was working as a cook in the mess on payment. To begin with 10 to 30 persons used to take their meals at the mess and the number went on increasing and rose to about 100 on the polling day. Originally the mess was located in the house of Daulat Ram and afterwards it was moved to the house of Shri Shri Kishan. In the beginning he was the only cook engaged but on the polling day one Salig Ram, a lady whose name he did not know and two boys were also engaged at the mess. The witness was paid Rs. 2/- per day. The witness deposed that he used to tell the requirements of the mess to Pt. Brij Sunder Sharma who was staying at the house of Mulla Akbar Ali and Shri Brij Sunder Sharma managed to send the rations to the mess. Rations were not supplied from any particular shop. In the absence of Shri Brij Sunder Sharma, Shri Swadheerji used to supply ration and in his absence some other persons whose names he did not know arranged for the rations. Even in cross examination his testimony could not be shaken.

The other witnesses who have given evidence in support of the issue are P.W. 2 Shrimati Bhagwati Devi a member of the Praja Socialist Party, P.W. 5 Shri Parsootam Dass, Provincial Secretary of the Rajasthan Praja Socialist Party P.W. 10 Shri Mohammed Khan member of the Praja Socialist Party P.W. 12 Shri Yusu Khurram a supporter of the P.S.P. candidate, P.W. 14 Shri Ghanshyam Saran Bhargava, candidate of the Hindu Maha Sabha Party, P.W. 16 Shri Prem Narain Joshi, Secretary Hindu Maha Sabha Branch Sironj, P.W. 19 Shri Sanotsh Kumar Saxena, a member of the Sironj Municipal Board, P.W. 20 Shri Madan Lal, a Hindu Maha Sabha candidate, P.W. 21 Shri Kok Singh & P.W. 21 Shri Kesri Mal Jain Praja Socialist Party candidate.

The testimony of P.W. 19 is that he had entered into a contract with Shri Brij Sunder Sharma at the house of Daulat Rai who was present for supplying ready made tea in the Congress Election Office. Tea was to be supplied on the orders of Swadhinji or Daulatraji and chits used to be received for such supply and Swadhinji used to make payment. Two hundred fifty to three hundred workers from outside were working in support of the congress candidate and he supplied tea for a period of over one month. In the beginning ten to fifteen cups of tea were supplied per day. The number went on increasing and rose to about 100 cups per day. Regarding the number of workers who were supplied

food including tea by the respondent No. 1, his testimony corroborates the statement of Rajmal that the workers rose to 100 on the polling day though in the beginning they were about ten to thirty persons. It was argued that in the allegations and the Schedule of particulars filed with the petition there was no allegation that tea was also supplied to the workers. This is correct. But it would be taking too technical a view to hold that the food to workers did not include tea. At any rate his statement supports the evidence of other witnesses about the number of workers fed at Sironj and that such workers were fed by the respondent No. 1 at his own expense. The statements of Prem Narain Joshi, Mohammad Khan, Yusuf Khureshi, Ghanshyam Saram Bhargava, are that the respondent fed his workers and was running kitchens for them at Sironj and other places. P.W. 12 Ku.eshi's evidence is hearsay and could be ignored. Most of the other witnesses are either defeated candidates or members of the political parties other than the Congress and a majority of them are also workers of their parties. If their testimony had not been corroborated by the statement of Congress workers themselves and other independent witnesses it would have been a question for consideration whether such evidence should be relied upon. But their statements are corroborated by the evidence of important congressmen whose evidence has already been discussed. We have, therefore, no hesitation in placing reliance on their statements.

In rebuttal about nine witnesses have been examined by the respondent including the respondent No. 1 himself. The most important witness is R.W. 19 Shri Brij Sunder Sharma himself. In his examination in Chief, he has categorically denied having incurred any expenses on feeding his workers. He stated that the people of Sironj are very hospitable and his workers lived on their hospitality. Regarding the number of his workers he stated that the total for whole of Sironj constituency could not have been 400 even inclusive of local workers.

From his evidence it appears that he is not aware of the number of workers who were working in his support in the constituency because during cross examination he stated that he came to know after the election regarding the presence of Shri Laxmi Narain Azad, Kanwarlal Jella, Lal Bahadur M.L.A. and Shri Nemi Chand Jain of Kotah and he did not see Shri Kundan Mal Chopra. He further stated that he did not keep any record of the workers who came from outside the constituency to work for him nor could he say how many outside workers were working for him on the polling day at Sironj. But he guesses that the total number of workers in the entire constituency from outside were not more than 15 to 20.

He has stated that he came to know of the presence of Shri Nemi Chand Jain after the election while P.W. 4 Shri Nemi Chand Jain has deposed that he worked as Polling Agent at Muraria Polling Station for the respondent No. 1. It is very difficult to believe that the witness did not know his own polling agents. He must have given him the authority to work as polling agent on his behalf as he was himself his Election Agent. It may be noted that the witness had not the courage to deny that P.W. 4 Shri Nemi Chand Jain was not his polling agent at Muraria Polling Station. His statement cannot, therefore, be relied upon.

In his examination-in-chief he did not say anything about his accounts nor has he produced the account books. When cross-examined he stated that the accounts of the bye-election were maintained by him but he was not certain if the account book was with him or had been destroyed, for after the filing of the return of expenses he did not consider it necessary to preserve it. It is difficult to understand that he does not even remember whether he had destroyed the accounts book or it was still lying with him. He wants us to believe something which is most unlikely that although an election petition was filed against him and one of the objections taken was that he had filed a wrong return of expenses, he did not care to check up at the time of preparing his written statement and his defence whether or not he had the original accounts with him. Therefore, his answer that he does not remember whether he had destroyed the book of accounts or it was still lying with him, cannot be accepted as true.

Section 44 of the Representation of People Act, 1951 provides that every election agent shall keep separate and regular book of accounts and shall enter therein such particulars of expenditure in connection with the election as may be prescribed. From the examination of the nomination papers filed by the respondent No. 1 Shri Brij Sunder Sharma, before the Returning Officer, I find that he appointed himself as his agent for the purpose of Section 44. It was, therefore, his duty to keep separate and regular books of account and enter therein such

particulars of expenditure in connection with the election as are prescribed. Rule 111 of the Rules made under the 1951 Act reads—

111. Accounts of Election Agents—The books of accounts to be kept by an election agent under section 44 shall contain a statement—

- (a) of all payments made or authorised by the candidate or by his election agent or made on behalf of the candidate or in his interests by any other person with the consent of the candidate or his election agent for expenses incurred on account, or in connection with, the conduct and management of the election, and
- (b) of all unpaid claims in respect of such expenses of which the candidate or his election agent is aware.

This rule provides that such books of accounts shall contain a statement of all payments made and expenses incurred on account, or in connection with, the conduct and the management of the elections. It was, therefore, the duty of respondent No. 1 to keep separate book of accounts containing a statement of all such payments made and expenses incurred in connection with or on account of the messes, if any, run at Sironj and Lateri, for his workers. Respondent No. 1 failed in his duty to place before the Tribunal the book of accounts maintained by him under section 44 of the Act. It was his duty to preserve the accounts and if required to produce them before the Tribunal when an election petition had been filed against him. The very purpose of the provisions of Section 44 and Rule 111 would be defeated if a respondent against whom an election petition had been filed was allowed to withhold such account books from the Tribunal on the pretext that they had been destroyed, lost or misplaced by him after he had filed his return of election expenses under the impression that their preservation had become unnecessary. Their non-production on this pretext by respondent No. 1 raises a presumption against him that either he did not maintain such accounts and if he did maintain, he did not want to produce them because their production would go against the case he has set up in his defence.

His statement that all the workers throughout the constituency and at Sironj took their meals with their friends and that he did not make any arrangements for them for their stay, nor for their meals nor even for their tea is very difficult to believe. It is significant that R.W. 17 Shri Rikh Chand Dhariwal, the President of the District Congress Committee, Kotah, does not deny the existence of separate accounts books with the District Congress Committee, Kotah, of any expenses that the committee may have incurred in connection with this bye-election, although P.W. 8 Shri Rameshwar Dayal, the General Secretary of the District Congress Committee stated that the president of the District Congress Committee Kotah, used to operate the account of the Congress Committee.

Most of the witnesses examined in rebuttal of this issue in their cross-examination deny knowledge regarding the food arrangements made for the congress workers during the bye-election and only assert that as far as they themselves are concerned they lived on the hospitality of their friends. Most of the R.Ws., have suggested that the local congress workers throughout the constituency extended their hospitality to other congress workers who visited the place, during this period, in connection with the election work. As already stated, I am unable to place any reliance on these statements. May be that some of the workers either during the whole stay or during a part of their stay were invited to meals by their friends, relations or admirers. But it is difficult for me to accept the position that for 20 or 25 days from the 5th October to the 15th November or during a major part of this period, no arrangements were made for workers anywhere in the constituency either for their stay or for their meals by the candidate or by the Congress party.

It is significant to note that both Shri Daulat Rai and Shri Shri Krishan have been examined as R.W. 10 and R.W. 16 respectively by the respondent. R.W. 15 the cook Raj Mal had stated that originally the mess at Sironj was located in the house of Shri Daulat Rai but later it was moved to the house of Shri Sri Kishan. R.W. 10 Shri Daulat Rai stated that some workers took their meals with him during this period and others took their meals with Shri Shri Kishan Vakil but there was no mess for the purpose either at his house or at the house of Shri Shri Kishan and he himself met the expenses of feeding the workers.

R.W. 16 Shri Shri Kishan deposed that to his knowledge there was no such mess run on behalf of the Congress candidate or the party at Sironj. Although he is a member of Congress Party and a local resident of Sironj and a supporter of respondent No. 1, but he had not the courage in an unqualified manner to deny

that no such mess was run at Sironj. When cross-examined he deposed that he did not know where the workers used to take their meals at Sironj. This witness was got summoned by Shri Abbhina Hari who wanted to examine him as his own witness along with the mess-register. The witness admits that he informed him that he had no such mess register and it was upon this information that Shri Abbhina Hari told him not to attend the court. In cross-examination this witness denied that he had told the petitioner that the mess register had been taken away by Shri Brij Sunder Sharma after the bye-election. The witness has also stated that Raj Mal Brahmin of Sironj is a cook by profession. Unlike R.W. 10 Shri Daulat Rai he does not state that some of the workers used to take meals at his house as his guests and at his expense. It is difficult to believe that he did not know where the Congress party workers were taking their meals. No reliance can be placed on his testimony that no mess was being run by the Congress Party at Sironj at his residence. R.Ws. 4, 7, and 9 are party men and have said nothing on this point in examining in chief. Their evidence and that of R.W. 55 read as a whole is vague and not convincing.

For the reasons stated above, I have no hesitation in holding that respondent No 1 incurred expenses in making arrangements for the meals of his workers at Sironj and Lateri and at other places in the constituency, which he did not include in the Return of expenses submitted by him.

Section 124 of the Act reads:—

124. The following shall also be deemed to be corrupt practice for the purpose of this Act.

(4) The making of any Return of election expenses which is false in any material particular or the making of a declaration verifying such return.

The next question that arise for determination is whether the omission of expenses of entertaining his works and of the messes run for the purposes by Shri Brij Sunder Sharma from his return of election expenses amounts to making a false return in material particulars for the purpose of Section 124(4).

In 3 E.L.R. 197 at page 230 a distinction was drawn in respect of the major and minor corrupt practices in making incorrect returns under Section 124(7) and Section 124(4) respectively. It was held that the expression 'false' occurring in section 124(4) of the Act indicates that the expenses shown in the Return of election expenses are deliberately incorrect and this incorrectness is due to corrupt motive. The motive may be to omit the legitimate expense from the Return where a maximum scale has been fixed or the intention may be to conceal expenditure which would go to prove some corrupt practice. It was further held that if any particular item of expenditure was not included in the Return of Expenses it was evidence of knowledge on the part of the election Agents that the expenditure was corrupt. According to this view of the law, the essential elements were deliberate filing of an incorrect Return due to corrupt motive. The motive may be to conceal the expenditure which would go to prove some corrupt practice and the omission of such items of expenditures from the Return raises a presumption that the omitted items were corrupt.

In 9 E.L.R. 67 the view taken was that there could be no corrupt practice without a corrupt motive and it was for the petitioners to establish the corrupt motive. In that case the omitted expenditure was incurred before the date of the nomination under a bonafide mistake that it was not necessary to include it.

In 9 E.L.R. 145, the Punjab High Court observed:—

"The filing of a false return is no doubt a minor corrupt practice and cannot be made the ground for setting aside an election, but if it is proved that the statements made in the return are false, then it may be argued that the candidate was guilty of major corrupt practices, for the deed which has been falsely reported in the return may have affected the result of the election and may amount to a major corrupt practice as defined in Section 123. The Tribunal will, therefore, have to decide (1) was the return false, and (2) what were the deeds or misdeeds committed by the candidate. As far as (1) is concerned it is no more than a minor corrupt practice, but the result of (2) will no doubt affect the validity of the election."

It appears that the view taken in that case is that proof of motive was not an essential element under Section 124(4), if a Return was proved to be false it was enough. Although no reasons are given in support of this view but the reasons

appear to be that deliberately withholding any expenditure would be failure of duty and non-compliance with mandatory provisions of law as contained in Section 76 of the 1951 Act and Rule 112 of the Rules made under the 1951 Act read with Schedule IV to the Rules.

In 9 E.L.R. 324 the view of the majority of the members of the Tribunal was that unless the expenditure withheld from the return also amounted to a corrupt practice either because it was a corrupt practice to incur any expenditure on such act or because by including the expenditure in the Return the prescribed maximum would be exceeded there could be no corrupt practice within the making of S. 124(4). But in that case one of the members dissented from this view. His opinion was that if consciously and deliberately a false return was made and some expenditure was concealed which should have been included in the Return of election expenses, the corrupt practice within the meaning of section 124(4) was committed. In a learned Judgment the meaning of the expressions 'false', 'material', and 'particulars' were discussed.

In 10 E.L.R. 129 the Supreme Court made the following observations:—

"It follows from this that in having incurred any expenditure over and above what was shown by him in his return of election expenses he cannot be said to have concealed such expenditure and, therefore, he cannot be held to have been guilty of any minor corrupt practice under section 124(4) of the Act."

According to the Supreme Court, therefore, the gist of the minor corrupt practice under section 124(4) is concealment of such expenditure over and above what was shown in the Return of Election expenses.

The expression 'such expenditure' refers to expenditure which was material. That expenditure is material which, it was the duty of the candidate, to include in his Return of Election Expenses, under the provisions of Section 76 of the 1951 Act read with Rule 112 and paragraphs 1 and 2 of Schedule IV of the Rules. Schedule IV paragraphs 1 and 2 reads as under:—

(1) Under the head of receipts there shall be shown the name and description of every person (including the candidate), club, society or association from whom any money, security or equivalent of money was received in respect of expenses incurred on account of, or in connection with, or incidental to, the election, and the amount received from each person, club, society or association separately.

(2) Under the Head of expenditure there shall be shown:—

- (a) the personal expenditure of the candidate incurred or paid by him or his election agent, including travelling and all other personal expenses incurred in connection with his candidature;
- (b) the name, and the date and total amount of the pay, of each person employed as an agent (including the election agent), clerk or messenger;
- (c) the travelling expenses, and any other expenses incurred by the candidate or his election agent on account of agents (including the election agent), clerks or messengers;
- (d) the travelling expenses of persons, whether in receipt of salary or not, incurred, in connection with the candidature, and whether paid or incurred by the candidate, his election agent or the persons so travelling;

In the present case respondent No. 1 omitted from his Return of Election Expenses, expenditure incurred by him on entertaining his workers and in running messes at Lateri and Sironj for the purpose deliberately and not by slip or error. This amounts to concealment of expenditure. The Return is, therefore, false. It is false in material particulars because it is a requirement of law that he should have included such expenditure in his Return.

My finding, therefore, is that respondent No. 1 Shri Brij Sunder Sharma committed a minor corrupt practice within the meaning of Section 124(4) of the 1951 Act and filed a false return of election expenses in material particulars.

Issue No. 16(b)—

P.W. 6 Shri Kundan Lal Chopra and P.W. 7 Shri Laxmi Narain Azad who are both members of the Congress Party and were the Agents of the respondent No. 1 during the bye-election and canvassed for him have deposed that each one of them was paid Rs. 20/- for the journey to Sironj and back by Shri Rameshwar Dayal,

General Secretary of the District Congress Committee, Kotah and Shri Laxmi Narain Azad has further stated that he was paid Rs. 25/- for meeting his food charges for this journey and during his stay in Sironj constituency. P.W.8 Shri Rameshwar Dayal has denied having advanced this money.

For the reasons, already discussed, in connection with the disposal of Issue Nos. 15 and 16A, I have no hesitation in relying upon the testimony of Kundan Lal Chopra and Shri Laxmi Narain Azad that they were paid the aforesaid sums by Shri Rameshwar Dayal's General Secretary of the District Congress Committee, Kotah, for their travelling and other expenses for their visit to Sironj constituency for the purpose of canvassing and supporting the candidature of the congress candidate Shri Brij Sunder Sharma, Respondent No. 1.

Shri Brij Sunder Sharma failed to show this expenditure in his return of Election Expenses, although it was his duty to have included it under section 76 of the Act read with rule 112 of the Rules made under the 1951 Act and Schedule IV of the aforesaid Rules.

My finding is that this was a conscious act, and, therefore, amounts to filling a false return of election expenses in material particulars and respondent No. 1 has thereby committed a minor corrupt practice within the meaning of section 124(4) of the 1951 Act.

The question arises that whether under section 99 of the Act, it is necessary before recording a finding that Shri Brij Sunder Sharma committed a minor corrupt practice under section 124(4) to give him a notice and to hold an inquiry as provided in section 90(1) (a) (b). Following the Supreme Court decision in *Tirath Singh Vs. Bachita Singh* and others in Civil Appeal No. 21 of 1955 dated 15th September, 1955 I hold that no such fresh notice and no such further inquiry is necessary in this case. The reason is that Shri Brij Sunder Sharma is a party to these proceedings being respondent No. 1 and had opportunity to cross-examine the witnesses of the petitioner and adduce evidence in rebuttal.

#### Issue No. 7—

On this issue the petitioner has examined four witnesses. They are P.W. 10 Shri Mohmud Khan, P.W. 14 Ghan Shyam Saran Bhargava, P.W. 17 Shri Sheikh Chand Khan and P.W. 22 Shri Kesri Mal Jain. P.W. 10 Shri Mohmud Khan, P.W. 17 Shri Sheikh Chand and P.W. 22 Shri Kesri Mal Jain state that towards the end of September one day at the tank in the vicinity of Sironj they happened to be present when Shri Bakshi the Executive Engineer, Irrigation, came to inspect the tank. Shri Bakshi talked to the people who had collected there and said that they should vote for the congress candidate and he would remove their difficulty and repair the tank. P.W. 17 Shri Sheikh Chand Khan further deposed that Shri Bakshi also said that he had been deputed by Shri Brij Sunder Sharma to make a survey of the tank. Shri Mohmud Khan was not even cross-examined on this point. It was suggested that their evidence should not be relied upon because Kesri Mal Jain was one of the defeated candidates and Shri Mohmud Khan and Shri Sheikh Chand Khan were members of the Praja Socialist Party and, therefore, all the three of them were interested witnesses. I find it difficult to hold that just because a person belongs to a particular political party or worked for a particular candidate, he could be refuted as an interested witness and on that account his evidence given on oath could be discarded, and more so when, as in the present case, Shri Mohmud Khan has not even been cross-examined on this point.

In rebuttal two witnesses have been examined. They are Shri Furkhan Ali and Shri Bakshi. So far as Shri Furkhan Ali is concerned he only denies having introduced P.W. 14 Shri Ghan Shyam Saran Bhargava to Shri Bakshi, but so far as the other three witnesses are concerned his evidence is of no avail. We are, therefore, left with the evidence in rebuttal of Shri Bakshi alone. He was interested in denying that he did any propaganda in favour of Shri Brij Sunder Sharma. He has admitted that although reports for the survey of tanks at Sironj and in that sub-division had been pending with him since 1951 or 1952 and even the S.D.O. or the Tehsildar had written to him about it and survey had been done by his subordinates but he found time to inspect in the end of September, 1953, a few days before the polling day and the excuse he gives is that rains prevented him from visiting earlier. Rains could not have set in before the middle of June, Shri Brij Sunder Sharma had been recommended by the Pradesh Congress Committee to the All India Congress Committee for being set up as a candidate on behalf of the Congress Party at the bye-election in question in the end of the month of May and Shri Brij Sunder Sharma was present at this meeting of the



Pradesh Congress Committee and agreed to his name being recommended according to his own statement as R.W. 19. Under these circumstances Shri Brij Sunder Sharma became a candidate since that day. It appears that Shri Bakshi made up his mind to visit Sironj only after Shri Brij Sunder Sharma had become a candidate. It is significant that Shri Bakshi admits that since November, 1950, his Headquarters are at Bundi and he had occasions to meet Shri Brij Sunder Sharma at parties there. In his anxiety to deny any assistance to Shri Brij Sunder Sharma he goes so far as to deny that he had knowledge that a bye-election was to be held in the Sironj Constituency and that Shri Brij Sunder Sharma was a candidate at it, even on the occasion of his visit in the end of September, 1953, although he stayed at Sironj for two days and moved about the whole constituency inspecting tanks. According to him he came to know about the candidature of Shri Brij Sunder Sharma somewhere in the middle of November, 1953. This is highly improbable that Shri Bakshi would not even know that a bye-election was going to take place at Sironj on the occasion of his visit in the end of September, 1953, and would not know that Shri Brij Sunder Sharma was a candidate at it till about the middle of November, 1953. Under these circumstances, no reliance can be placed on his testimony. Shri Ghan Shyam Saran Bhargava has stated as P.W. 14 that he was introduced to Shri Bakshi in the compound where the courts of the Munsiff Magistrate and the sub-divisional magistrate are located at Sironj by Shri Furkan Ali and Shri Bakshi remarked that Shri Brij Sunder Sharma was going to contest the bye-election. It is he who had sent him for this work and if he was returned more improvements will be made and he added that he hoped that they would all support Shri Brij Sunder Sharma's candidature. Shri Furkan Ali denies having introduced Shri Bhargava to Shri Bakshi and Shri Bakshi denies having said so to Shri Bhargava. He denies that he went to the compound where the courts are located. He also denies that he met or was introduced to Shri Bhargava. Shri Bhargava is a defeated candidate. There is no suggestion that he may not be telling the truth but there is no corroboration of his statement. Without corroboration it would not be prudent to accept his statement since he is an interested person.

I, therefore, have no hesitation in holding that Shri Bakshi, who is serving under the State of Rajasthan did visit Sironj in September, 1953, in order to further the prospects of Shri Brij Sunder Sharma in the bye-election and that he did so either at the request of Shri Brij Sunder Sharma or with Shri Brij Sunder Sharma's connivance. Shri Brij Sunder Sharma, therefore, committed a major practice within the meaning of section 123(8) of the 1951 Act.

#### *Issue No 6—*

This issue consists of two parts. The first is that Shri Shiv Raj Singh, Sub-Inspector of Police had been transferred from Sironj about a month before the bye-election in question to Jeepla. But he was re-transferred to Sironj at the instance of respondent No. 1. Second, Shri Shiv Raj Singh intimidated voters in favour of respondent No. 1 by arresting prominent workers of Socialists and Hindu Maha Sabha parties three or four days before the polling day by disturbing a meeting of these parties that was being held.

In support of this issue six witnesses have been examined by the petitioner and two by the respondent No. 1. They are P.W. 16 Shri Prem Narain Joshi, P.W. 17, Shri Sheikh Chand Khan, P.W. 19 Shri Santosh Kumar Saksena, P.W. 20 Shri Madan Lal, P. W. 21 Shri Kak Singh and P.W. 22 Shri Kesri Mal Jain. Respondent's witnesses are R.W. 13 Shri Shiv Raj Singh and R.W. 15 Shri Ranglal.

The substance of the evidence of the petitioner's witnesses is that Shri Shiv Raj Singh S. I. was transferred from Sironj to Jeepla a month or two before the bye-election in question but was re-transferred on the occasion of the bye-election in question to Sironj. That a meeting on behalf of the Congress party was being held about fifteen days before the bye-election on the 27th of October, 1953 in Sironj Bazar and Shri Rang Lal the Chairman of the Municipal Board, Bundi, was telling something to the members of Agarwal Community. He was interrupted by some of the members of audience who asked him to reserve his remarks for Bundi. Thereafter the Sub-Inspector Shri Shiv Raj Singh came on a horse-back and dispersed the meeting. Shri Shiv Raj Singh pointed a pistol at Shri Prem Narain Joshi and asked others to disperse. About 15 to 20 days thereafter leading Hindu Maha Sabha and Praja Socialist Party workers were challaned in the court of the Munsif-Magistrate, who acquitted them. As a result some of the Hindu Maha Sabha and Praja Socialist Party workers avoided supporting their party candidates.

P.W. 16 is Shri Prem Narain Joshi himself. His statement is that on the 27th of October, 1953 at night a meeting was held organized by Congress Party. A speaker Shri Rang Lal of Bundi made certain remarks which were objected to by several persons from the audience. Due to this breach of peace was apprehended. Some one went to the police station. Shri Shiv Raj Singh S. I. came to the place of meeting along with some police constables and ordered all persons in the bazar to disperse including him. Others dispersed but he insisted on remaining there. On this Shri Shiv Raj Singh pointed his revolver towards him and threatened to take him to the Kotwali under fetters although it was not done.

The statement of Shri Rang Lal R. W. 15 is that he was the Chairman of Bundi Municipality during the bye-election at Sironj. At a meeting held to support the Congress candidate Shri Brij Sunder Sharma some persons who were in opposition started rowdism when he was addressing the meeting and some of such persons even surrounded him and started malhandling him. There were some police constables present at the meeting, and he observed that there should be some police arrangement to prevent such disturbance. The rowdism continued for about twenty minutes. His shirt was pulled and his buttons were broken. The Sub-Inspector Sironj arrived on a horse back with some more police force and warned the rowdy people to disperse. Immediately thereafter he made a written report about the disturbance to the Sub-Inspector and a case was registered and six persons were prosecuted.

The statement of R.W. 13 Shri Shiv Raj Singh is that he was the S.H.O. Sironj during the bye-election in question. A police constable who was on duty at a public meeting which was being held at Sironj reported to him the likelihood of disturbance. Thereupon, he proceeded to the meeting. He found a large number of persons had surrounded the President of the meeting Shri Rang Lal and he was given to understand that some persons had caught hold of Shri Rang Lal's throat, pulled his shirt and broke his buttons. He immediately removed the persons who were disturbing the meeting and warned them to leave the meeting. Shri Rang Lal gave him a written report naming certain persons as disturbers. On that basis he filed a complaint in the court of Sub-Divisional Magistrate against ten or eleven persons under some provisions of the Representation of People Act. He further states that Shri Prem Narain Joshi is a History Sheeter in police but denies having pointed a revolver or pistol at him. He further states that during his posting at Sironj he was deputed for about two months to work at Jeepla as Sub-Inspector temporarily but his permanent posting continued at Sironj. His temporary transfer to Jeepla was in connection with a complaint against Jeepla Sub-Inspector.

There is no evidence that this temporary transfer and re-transfer to Sironj of the Sub-Inspector Shri Shiv Raj Singh was made at the instance of respondent No. 1. The explanation given by the Sub-Inspector Shri Shiv Raj Singh appears to be reasonable and there is no reason to disbelieve him. It cannot, therefore, be held that the transfer or the re-transfer of the Sub-Inspector Shri Shiv Raj Singh to Sironj during the bye-election in question was made at the instance of respondent No. 1. Further from the evidence of the parties the conclusion is that a Congress meeting was being held. Shri Rang Lal was addressing the meeting. There was some disturbance at the meeting. Shri Rang Lal was mishandled and the Sub-Inspector came to maintain law and order in the discharge of his official duties and whatever he did thereafter was in the discharge of his official duties and not to help the respondent No. 1 by intimidating prominent workers of the other parties.

We, therefore, find this issue against the petitioner.

Issue No. 9—

The petitioner examined two witnesses in support of this issue. They are P.W. 14 Shri Ghan Shyam Saran Bhargava and P.W. 19 Shri Santosh Kumar Saxena. The statement of Shri Ghan Shyam Saran Bhargava is that about two months before the polling day Shri Hari Singh, Chief Panchayat Officer, Rajasthan, held a camp of all the Pancha and Sar-Panchas and on the occasion of inauguration ceremony of the Panch Sammelan he invited some of the respectable citizens of Sironj and that (the witness) was also invited on that occasion. The substance of what Shri Hari Singh, the Chief Panchayat Officer, said at the meeting was that Shri Brij Sunder Sharma, while he was in charge of the Gram Panchayats in former Rajasthan, got the Gram Panchayat Act enacted and it was on account of his efforts that the Panchayats were established. He further said that Shri Brij Sunder Sharma was to contest the bye-election and he expected the Panchas and Sar-Panchas and others to extend their support to him. Further he

stated that he was not satisfied with the working of any of the Panchayats and was likely to dissolve them but if Shri Brij Sunder Sharma was elected he would extend all possible help to the Panchayats and make improvements in their working and they will be allowed to continue to exist.

P.W. 19 Shri Santosh Kumar Saksena deposed that being the Member of the Municipal Board, Sironj, the Chief Panchayat Officer, whose name he did not know, invited him to witness the inauguration of a camp of Panchas and Sar-Panchas at Sironj about two or three months before the polling day during the bye-election in question. The camp was organized at the Sironj High School premises. After the inauguration ceremony the Chief Panchayat Officer addressed those who were present. In his address the Chief Panchayat Officer said that when Shri Brij Sunder Sharma was a Minister in former Rajasthan he was the author of the Panchayat Act. If he is elected and is appointed a Minister we may expect better legislation.

In rebuttal Shri Hari Singh, the Chief Panchayat Officer was examined who stated that in the normal course of the activities of his Department he held a Panchayat Camp in the third week of June, 1953, at Sironj for the sub-division Sironj. But he denied having made any such statement or having done anything to support the candidature of Shri Brij Sunder Sharma at his instance.

P.W. 14 Shri Ghan Shyam Saran Bhargava is one of the defeated candidates at the bye-election in question. All that he has stated is not corroborated even by the testimony of P.W. 19 Shri Santosh Kumar Saksena. He is giving a highly exaggerated version. But I do not see any reason to disbelieve what Shri Santosh Kumar Saksena has stated. It appears that during his speech at the inauguration camp some indiscreet remark may have escaped the Chief Panchayat Officer, but I am not prepared to believe that the remark was made at the instance of Shri Brij Sunder Sharma or any of his agents or at his connivance or with the object of supporting his candidature. Nor do I feel that such a remark could have in any way helped the candidature of Shri Brij Sunder Sharma.

It is an admitted fact that Shri Hari Singh was the Registrar of Panchayats in the former Rajasthan when respondent No. 1 Shri Brij Sunder Sharma was the Minister Incharge and it was then that some Panchayat legislation was enacted by the former Rajasthan. It is, therefore, understandable that in the normal course some remarks, as stated by Shri Santosh Kumar Saksena, slipped out of the mouth of the Chief Panchayat Officer. It could not be an election propaganda because the Chief Panchayat Officer is also stated to have said that better help could be expected not only by his election but by his election and appointment as Minister. One of those present at the meeting could be expected to help the candidate in becoming a Minister.

In A.I.R. 1953 Supreme Court 775 it is held,

"The possibility that the Congress might not adopt him as its candidate does not, as already mentioned, affect the position, as the section has regard only to the volition and conduct of the candidate. It is true that if the Congress did not adopt him, the appellant might not be able to stand for election. But such a result is implicit in the very motion of a prospective candidate, and does not militate against his becoming one from the date of his application."

In this view of the law the petitioner had become a candidate in the month of May, 1953 when he agreed to the proposal of his name being recommended by the Pradesh Congress Committee for contesting for the seat in the Legislative Assembly from Sironj constituency at the bye-election in question. But the camp was held four months before the bye-election took place. It is, therefore, difficult to understand that such an indiscreet remark was meant or could have been understood to mean by any reasonable person at that distant date, as active canvassing by a Government servant in favour of respondent No. 1's candidature. It may further be noted that in the cross-examination of Shri Hari Singh, the Chief Panchayat Officer, it was suggested that he had in the past similarly held Panchayat Camps immediately before bye-elections in the Kishangarh and Tonk constituencies. The Tribunal ressumoned Shri Hari Singh with all the record of such camps held by him in Rajasthan but the petitioner did not cross-examine him on this point nor was the record which was made available, made use of. This also shows that although a suggestion was made in the cross-examination but the petitioner inspite of opportunity could not substantiate it.

My finding, therefore, is that the petitioner has failed to prove that Shri Hari Singh, the Chief Panchayat Officer, asked Panchas and Sar-Panchas of Sironj

Sub-division to help respondent No. 1's candidature at the bye-election in question and I find Issue No. 9 against the petitioner.

Issue No. 10—

Three witnesses have been examined on this issue by the petitioner. They are P. W. 10 Shri Mohmud Khan, P.W. 12 Shri Yusuf Quareshi, P.W. 17 Shri Seikh Chand Khan. Their statements are that they attended a camera meeting at the Takiya where a Madras is located and where Shri Hafiz-ur-Rehman was putting up at Sironj during his visit before the polling day. Shri Hafiz-ur-Rehman told the audience that it was the duty of the Muslims to obey the Government in power. Since Congress Government was in power it was the duty of the Muslims to support that Government. P.W. 10 Shri Mohmud Khan further stated that if they failed to do so, it would amount to disobedience to a command of God. While the other two witnesses deposed that he further stated that if the Muslims failed to do so, they would incur the displeasure or wrath of God. All the three witnesses have deposed that Shri Hafiz-ur-Rehman had recited an ayat of the Holy Book in support of his statement. But in cross-examination none of them could say what that ayat was and it was only the meaning of the ayat as explained by Shri Hafiz-ur-Rehman that the witnesses could state about. All the three are Muslims. P.W. 10 Shri Mohmud Khan admitted that he has read Quran and Hadis and Shri Yusuf Quareshi and Shri Seikh Chand Khan admitted that they have read Quran and know the ayat but were unable to state which ayat it was. P.W. 12 Shri Yusuf Quareshi is not even a resident of Sironj and from his evidence it appears that he may not even have been present on the occasion.

In rebuttal Shri Hafiz-ur-Rehman has not been examined but other witnesses have come and stated that Shri Hafiz-ur-Rehman did not make any such speech.

My finding on this issue is that the quality of evidence produced on this issue is not of a convincing nature to show that in his speech Shri Hafiz-ur-Rehman administered threats that if they did not follow his advice which was in accordance with the Quran and Hadis they will incur the displeasure of God.

Section 123(2) a (ii) reads:—

"Induced or attempts to induce a candidate or an elector to believe that he, or any persons in whom he is interested will become or will be rendered an object of divine displeasure or spiritual senses, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause."

It will, therefore, be seen that mere exhortations by a priest or a head of a religious institution to explain the moral or religious code and to explain that according to that Code a particular candidate should be supported would not amount to a corrupt practice within the meaning of section 123(2) a (ii). But if he exceeded these limits and playing upon the sentiments and beliefs of his audience, threatened them or made them to believe that they will become object of divine displeasure or spiritual censure by not supporting a particular candidate, it would then be deemed to be interference on his part, with the free exercise of their electoral rights, and would be a corrupt practice within the meaning of this provision of Law.

P.W. 10 Shri Mohmud Khan does not state that any such threats were administered to the audience at the meeting by Shri Hafiz-ur-Rehman. All that he said was that Shri Hafiz-ur-Rehman quoted some ayats from the Holy Book and stated that according to the precepts of Quran and Hadis, it was the duty of every Muslim to support the party in power and if any Muslim did not act accordingly they would be disobeying the Commands of God meaning thereby the Commands of the Quran and Hadis. This witness does not state that Shri Hafiz-ur-Rehman further stated that thereby they would incur the displeasure of God. Even if Shri Hafiz-ur-Rehman made the statement at the meeting, as deposed to by P.W. 10 Shri Mohmud Khan, in my opinion he was within his bounds and he did not thereby commit any corrupt practice. So far as the statement of Shri Yusuf Quareshi is concerned, I am not prepared to believe that he attended the meeting held *in camera* by Shri Hafiz-ur-Rehman; and regarding Shri Seikh Chand Khan it appears that he has stated more than what he may have heard Shri Hafiz-ur-Rehman say and I am not prepared to believe his statement that Shri Hafiz-ur-Rehman told the audience at the camera meeting that they would incur the displeasure of God if they did not follow his advice which was in keeping with the Commands of God as laid down in Quran and Hadis.

My finding on this issue, therefore is against the petitioner and in favour of respondent No. 1.

**Issue No. 12.**

On this issue the petitioner has examined six witnesses. They are P.W. 2 Shrimati Bhagwati Devi, P.W. 5 Shri Purshottamdas Mantri, P.W. 10 Selkh Chand Khan, P.W. 16 Shri Prem Narain Joshi and P.W. 20 Shri Madan Lal and P.W. 22 Shri Kesri Mal Jain.

In rebuttal the respondent No. 1 has examined two witnesses besides examining himself as R.W. 19. They are R.W. 2 Shri Randheer Singh and R.W. 14 Shri Ghan Shyam Das.

Admitted or uncontested facts about this issue are that there were two pollings stations reserved for ladies for Sironj town. One of the stations was located at Raoji Ki Haveli and the other at the Customs Out-post Sironj. There were two booths at Raoji Ki Haveli polling station. The scheduled time for opening and commencing of work at the Polling Station was 8.00 A.M.

The substance of the evidence given by the petitioner's witnesses is that the work at one of the polling booths at Raoji Ki Haveli did not commence till about 10-30 or 11-00 A.M. That a large number of lady voters, most of whom were Hindus expected to vote in favour of the Hindu Maha Sabha candidate and some for the Praja Socialist Party candidate at that particular booth, were deliberately not allowed to vote by Respondent No. 1's Agents including his wife with the connivance of local officials incharge of the polling station and were told that they were not to vote at that particular station or at that particular booth. P.W. 20 Shri Madan Lal Agarwal has deposed that in about 10 or 12 such cases he found that voters had been wrongly told that they were not to vote at that particular station and that he pointed out their names and got them admitted meaning thereby admitted into the polling booth for casting their votes. According to the petitioner's witnesses the number of such ladies was about 400 to 500, and such lady voters did not return thereafter to cast their votes although the polling station remained open till the appointed hour in the evening and there was no difficulty felt by and voter after 10-30 or 11-00 A.M. at that station.

In the first place this evidence is vague and what the witnesses have stated appears partly to be based upon their opinion.

This is an admitted fact that there was some trouble at this polling station. R.W. 14 Shri Ghan Shyam Das, the Assistant Returning Officer deposed that at about 7-30 A.M. he was in the Tehsil compound. After sometime he received a report that a crowd had collected at the ladies polling station at Raoji ki Haveli and polling was not proceeding smoothly. Immediately he rushed to the spot. He found that the trouble was that there was a big rush of ladies there. Some of such ladies had come to that station although they were to give their votes at the other ladies polling station located at the Customs Out-post. Therefore, he got a sorting of such voters made and directed them to the proper polling station. Naturally such ladies had to return from such station without casting their votes.

In the process, it is quite possible that although a few of such ladies were to cast their votes at that very station and by some mistake or error they were told to go to the other station. Since the candidates or their Agents were present on the occasion and must have been vigilant and discovered and pointed out such mistakes, they were allowed to cast their votes. There is nothing strange that Shri Madan Lal Agarwal, P.W. 20 pointed out the mistake in ten or twelve such cases and it was corrected and such ladies were allowed to vote. None of the witnesses for the petitioner has been able to point out a single lady by name who was a voter at this station but was not allowed to vote. Nor has a single such lady voter been produced by the petitioner's in support of this contention. The vague statement of the petitioner's witnesses that a large number of ladies were seen going away grumbling and accusing the Congress Government, would not help. It is possible that the ladies grumbled when they were put to the inconvenience of going away from the wrong station. There is no evidence to show that any of such ladies was in fact a voter at the station in question. There is, therefore, no reason to disbelieve the testimony of the Assistant Returning Officer on this point.

R.W. 2 is the Returning Officer. He has stated that when he arrived at this ladies polling station on hearing of the trouble he got the lady voters arranged in separate queues boothwise to facilitate them to go to the right booth. This is also corroborated by the statement of the Assistant Returning Officer, and there is no reason to disbelieve this statement.

Further the allegation is that actual work at this polling booth did not commence till 10-30 or 11 A.M. Shri Kesri Mal Jain has stated that it did not commence till 1 P.M.

According to P.W. 10 Mohmud Khan he went to this polling station at about 8-30 or 9 A.M. About 400 to 500 women were waiting to cast their votes there. This statement is also corroborated by the testimony of R.W. 14 Shri Ghan Shyam Saran, the Assistant Returning Officer. According to him soon after his arrival at Tehsil polling station at about 7-30 A.M. he received the report about this trouble. Therefore, it is hardly believable that any booth did not open and the actual voting did not start till 10-30 or 11 A.M. or 1 P.M., at that particular both.

The conclusion, therefore, is that although the booth must have started working at the appointed time that is 8 A.M. but because of a big rush at about 8-30 or 9 A.M., some difficulty was felt in its smooth working. The Assistant Returning Officer immediately arrived and made arrangements and removed the trouble and smooth working resumed. The petitioner's witnesses are making wrong and highly exaggerated statements when they state that as a result 400 to 500 voters were refused their right to vote at that station because they were Hindu ladies, expected to support the Hindu Maha Sabha candidate.

This issue is, therefore, decided against the petitioner.

Issue No. 3 was not pressed by the respondent No. 1 and Issue Nos. 4, 5, 8, 11, 13 and 14 were not pressed and given up by the petitioner. It is, therefore, not necessary to decide them.

It may be pointed out that we do not propose to issue any notice to or to conduct any inquiry against Shri Bakshi under section 99 of the Act on the basis of our finding on Issue No. 7. The reason is that in our opinion further delay in the disposal of this petition would defeat its very purpose. Avoidance of delay is, therefore, assential and is far more important than naming Shri Bakshi under Clause (a) (ii) of Section 99 of the Act.

In view of our finding on Issue No. 2 we would declare the bye-election in question to be wholly void under section 100(1)(C) of the Representation of People Act, 1951.

In view of our findings on Issue Nos. 15, 16 and 17 we would declare that respondent No. 1 Shri Brij Sunder Sharma committed a major and minor practice under section 123(8) and 124(C) respectively of the aforesaid Act and the (Shri Brij Sunder Sharma) has thereby become disqualified for membership of Parliament and the Legislature of every State including the State of Rajasthan for a period of six years counting from the date of the finding of this Tribunal.

This will also entail disqualification under Section 141 of the Act.

Rs. 500/-/- as costs to the petitioner  
Sd. Radha Krishna Rastogi.  
Advocate-Member,  
Election Tribunal, Jaipur.  
30th April, 1956.

Sd. Sumer Nath.  
30th April 1956.  
Judge-Member,  
Election Tribunal, Jaipur  
30th April, 1956.

#### BY THE TRIBUNAL.

In view of the majority decision on Issue No. 2 the bye-election in question is declared to be wholly void. Further in view of the unanimous finding of the Tribunal on Issue Nos. 15 and 16 and also the majority decision on Issue No. 7 in regard to the commission of a corrupt practice by respondent No. 1, he will stand disqualified with effect from the date of this order, for membership of Parliament and of the Legislature of every State for a period of six years and also for voting at any election for a similar period in view of the provisions of Sections 140 and 141, respectively, of the Act.

The respondent No. 1 will pay Rs. 500/-/- as costs to the petitioner.

Sd Radha Krishna Rastogi  
Advocate-Member,  
Election Tribunal, Jaipur  
30th April 1956.

Sd. Anand Narain Kaul.  
30th April 1956  
Chairman,  
Election Tribunal,  
Jaipur.  
30th April 1956

Sd. Sumer Nath  
30th April 1956.  
Judge-Member,  
Election Tribunal,  
Jaipur,  
30th April 1956.

#### ANNEXURE I

In the High Court of Judicature for Rajasthan, Jaipur Bench.

#### ORDER

Brij Sunder Sharma s/o Pt. Vidya Dharji Sharma, r/o Bundi at present residing in 'C' Scheme, Jaipur.

Vs.

The Election Tribunal, Jaipur & 8 others.

D B. C. Writ Petition No. 92 of 1956.

Petition under Articles 226 & 227 of the Constitution of India

Date of order:—27th August, 1956.

#### Present

The Hon'ble Shri Justice J. S. Ranawat.

The Hon'ble Shri Justice K. K. Sharma.

Shri C. S. Pathak & Shri C. L. Agarwal for the petitioner.

Shri F. V. Tyagi for respdt No. 3 Abhinna Hari.

By the Court:

This is an application of Shri Brij Sunder Sharma under Article 226 of the Constitution of India for a writ of certiorari against the Election Tribunal, Jaipur and 8 others for setting aside its order dated 30th April, 1956, and also for prohibition against the said Tribunal directing it not to forward its order dated the 30th April, 1956, to the Election Commission. In the alternative, writ of mandamus or any other appropriate writ, direction or order under Art. 226 of the Constitution against the said Tribunal for setting aside the said order has been prayed for. It has further been prayed in the alternative that under Art. 227 of the Constitution the said order be quashed.

The circumstances leading to this petition are as noted below.

In November, 1953, a bye-election was held to fill in a seat of the Rajasthan Legislative Assembly from the Sironj Constituency in District Kotah. Shri Abhinna Hari, respondent No. 2 Shri Madan Lal Agarwal, respondent No. 3 Shri Kesri Mal Jain, respondent No. 4 and Shri Brij Sunder Sharma the petitioner before us, filled in their nomination papers and at the time of scrutiny of the said papers the nomination paper of Shri Abhinna Hari was rejected and the election was consequently contested by the three remaining candidates. Shri Brij Sunder Sharma was declared successful at the election, by means of a gazette notification of the 23rd of November, 1954. Shri Abhinna Hari (hereinafter to be referred as respondent No. 2) then filed an election petition on the 5th of February, 1954 before the Election Commission, Delhi which was forwarded to the Election Tribunal Jaipur for disposal. The Tribunal framed a number of issues out of which the following issues are relevant for the purposes of this petition:—

Issue No (2)—Whether the petitioner's nomination was improperly rejected and the rejection has materially affected the result of the election.

*Issue No. 7(a)*—Whether Shri Bakshi, Executive Engineer, Irrigation at Bundi, toured the constituency at the instance of respondent No. 1 towards the end of September and beginning of October, 1953, in order to further the prospects of respondent No. 1 in the bye-election.

*Issue No. 15(a)*—Whether respondent No. 1 fed about 400 workers during the election and the expenses of their feeding have not been shown in the return of election expenses filed by him.

*Issue No. 15(b)*—If so, what is the effect on the result of the election.

*Issue No. 16(a)*—Whether 4 community kitchens at Sironj, and one each at Deepur-Kharg, Anantpura, Ghatal, Lateri and Unarsital—were started by respondent No. 1 to feed his workers numbering in all about 400 and these expenses should have been included in the return of election expenses filed by the respondent.

*Issue No. 16(b)*—Whether travelling allowances were paid by the respondent to his workers of which the list has been filed by the petitioner and these expenses should have been shown in the return of election expenses.

Respondent No. 2 was not an elector in Sironj Constituency but he was an elector in Ladpura constituency in the district of Kotah. He presented 4 nomination papers to the Returning Officer on or before the 5th October, 1953, the date for the filling of the nomination papers. In column No. 8 of the three nomination papers the serial No. of respondent No. 2 of 1951 Electoral Roll of Ladpura Constituency was mentioned and in the 4th Nomination paper the same Serial No. was repeated but the description of the electoral roll was not given. The Electoral Roll of Kotah district was first prepared in the year 1951 which remained in force till the 17th of September, 1953, when a new electoral roll of 1952 was prepared and published and which was the electoral roll in force at the time of the filing of the nomination papers during this election. The contest between the parties relating to Issue No. 2 centred round the entry in Col. 8 of the 4th nomination paper which is Ex.P2/A on the record of the Election Tribunal and will be hereinafter referred to as Ex.P2/A, and which may be translated into English as noted below:

“8. Serial number of the candidate in the electoral roll of the constituency in which his name is included.

No. 3834—Bhimganj Mandi  
Ward No. 1 Kotah (A  
certified copy of electoral  
roll of 1951 annexed)”

This nomination paper Ex.P2/A was rejected on grounds which will appear from the copy of the order of the Returning Officer given below:

“This is a fact that Shri Abhinna Hari has filed in column No. 8 of the Nomination paper wrongly and any correction would have been allowed as to the entries at the time of presenting his nomination by the Returning Officer under section 33(5)(A) of the Representation of the People Act, 1951. He wants to have corrected this entry at the time of scrutiny. He has quoted no provision of Law nor I have come across any under which any correction of nomination paper can be allowed at this stage. Even if this candidate would have been allowed to correct his nomination paper at the time of presenting it before me he could not have corrected his nomination paper in time. This mistake came to his notice the very day and he tried to improve over his previous nomination papers by giving serial numbers of the proposer and seconder according to Electoral Roll of 1952. I, therefore hold that this mistake of filing serial number in column 8 from the electoral rolls not in operation is a substantial defect. Every man of ordinary prudence know that the electoral Rolls 1952 have been duly published and have come in force. This nomination paper is, therefore, rejected”.

Respondent No. 2's case before the Tribunal was that the defect in the entry of column 8 of his nomination paper was of a technical and non-substantial character and the Returning Officer acted illegally in rejecting his nomination paper, which affected the result of the election materially. He also alleged that the petitioner had been guilty of major and minor corrupt practices under sections 123 and 124 respectively of the Representation of People Act, 1951 (hereinafter to be referred as the Act) inasmuch as he had obtained assistance in furtherance of



the prospects of his election from Shri Bakshi, Executive Engineer, Irrigation, Bundi and had filed false return of election expenses by omitting to enter therein the messing expenses of his workers at Sironj, Lateri and other places and the travelling allowance of his workers.

The case of the petitioner was that order of the Returning Officer was correct in law and that respondent No. 2 not being an elector in Sironj constituency and his nomination paper not having been filled in accordance with law, had no *locus standi* to file an election petition on grounds of corrupt and illegal practices. He denied the allegations about major and minor corrupt practices mentioned above.

Two separate judgments were delivered—one by the Chairman of the Tribunal, Shri A. N. Kaul (hereinafter to be referred as the minority judgment) and other by Shri S. N. Gurtu and Shri R. K. Rastogi members (hereinafter to be referred as the majority judgment). By the minority judgment Issues Nos 15 (a) and 16(a) only were partially decided in favour of the respondent No. 2, and by the majority judgment all the issues excepting Issues No. 2, 7(a), 15 and 16 were decided against him. As a result the order of the Tribunal was pronounced in accordance with the majority judgment and the election of the petitioner was set aside and it was declared that he would stand disqualified with effect from the date of the order for membership of Parliament and of the Legislature of every State for a period of six years and also for voting at any election for a similar period in view of the provisions of sections 140 and 141 respectively of the Act for having committed major and minor corrupt practices under sections 123 and 124 of the Act.

The petitioner assails the findings in the majority judgment on all the above mentioned issues decided against him and in the minority judgment so far as it relates to Issues Nos. 15 & 16. Consequently, he prays that the order of the Tribunal dated the 30th of April, 1956, be set aside. His grounds are mainly as follows:—

(1) (a). The majority judgment having itself held that the mention of Serial No. at item 8 of the nomination paper from the electoral roll of 1951 was a technical defect of a substantial character committed an error on the face of the record in holding that the defect lost its substantial character on the production of a certified copy of an electoral roll of Ladpura constituency of 1952.

(b) That the view taken in the majority judgment that because there was no dispute about the identity of the respondent No. 2 and so the defect in Ex.P2/A should have been overlooked under sec. 36(4) of the Act, is altogether wrong in law and is manifestly erroneous.

(2) (a). That both the minority and majority judgments are manifestly wrong regarding running of the kitchens by the petitioner at Sironj and Lateri and for not having shown any expenses incurred thereon in the return of election expenses.

(b) That the majority judgment is patently erroneous inasmuch as it has been held on no legally admissible evidence that travelling allowances were paid by the petitioner to his workers and he failed to show them in his return of election expenses.

(3) that the majority judgment is erroneous on its face inasmuch as the finding of minor corrupt practices in issues No. 7(a) has been given on legally inadmissible evidence.

(4) That the election could not be set aside even if it were held that the petitioner committed any minor corrupt practice as alleged by respondent No. 2.

(5) that the tribunal had no jurisdiction to make an order that the petitioner would stand disqualified with effect from the date of the order for membership of Parliament and of the Legislature of every State for a period of six years and also for voting at any election for a similar period in view of the provisions of sections 140 and 141 respectively of the Act.

The petitioner has also pleaded that respondent No. 2 not being an elector in the Sironj constituency was entitled to present an election petition only if he

were able to prove that his nomination paper was improperly rejected. If it is found that the nomination paper was not improperly rejected, respondent No. 2 would have no *locus standi* to file an election petition against the petitioner, and therefore, respondent No. 2's election petition was liable to fail on this point alone and he was not entitled to be heard on the question of major and minor corrupt practices alleged by him.

On behalf of the respondent No. 2 who is the only contesting respondent in this case it has been pleaded that the defect regarding the entry of Serial Number in his nomination paper was only a technical defect of unsubstantial character and the nomination paper was, therefore, improperly rejected specially when a certified copy of the electoral roll in force had been filed at the time of scrutiny. It has been pleaded that even though the finding of the majority on this point be wrong it is at the best a mere mistake in law and this court has, therefore, no jurisdiction to quash the order of the Tribunal on this point. It has also been pleaded that the majority judgment on Issue No. 7(a) and the minority and majority judgments on Issues Nos. 15 and 16 were based upon legal evidence on the record and on a full consideration of the relevant law on the subject. They cannot, therefore, be quashed on a writ of certiorari. As regards the order of disqualification it has been pleaded that the Tribunal had jurisdiction to decide that question under section 93 of the Act and to incorporate in its order that the petitioner be disqualified for standing as a candidate for a Parliament and State Assembly seat for a period of six years and also for voting at any election for a similar period. It has also been pleaded that respondent No. 2 is not debarred from bringing an election petition on the grounds other than the rejection of his nomination paper also.

We have heard Shri G. S. Pathak on behalf of the petitioner and Shri V. P. Tyagi on behalf of respondent No. 2. Before we give the main grounds for decision which arise from the arguments of the parties before us we may say that after the case had been argued out on behalf of the petitioner, the learned counsel for respondent No. 2 while opening his arguments submitted that the petitioner had made certain false statements in his petition and his affidavits, and therefore, his petition should be dismissed on this sole ground without going into the merits. It was pleaded that the petitioner had averred that after the arguments on Issue No. 2 had been concluded on behalf of the petitioner and his counsel proceeded to enter upon arguments on other Issues, one of the members of the Tribunal made an observation that the only material issue in the case was Issue No. 2 and, therefore, no arguments were necessary on other issues. It was submitted that this allegation was altogether false in view of the reports of the Chairman and the two members of the Tribunal which have been filed in this case.

We have considered the arguments of the learned counsel for respondent No. 2. We may say that he did not take any such ground in his reply although he simply denied the allegations made by the petitioner in his petition in this respect. Had a point been specifically taken that the petition should be dismissed on this ground alone we believe the petitioner would not have left this point unpressed at the time of arguments. As there was a simple denial on behalf of respondent No. 2 so far as this allegation is concerned it is quite probable that the petitioner did not attach much importance to his allegation in this respect, and his counsel after having seen the reports of the Chairman and the members of the Tribunal did not think it proper to press this point any further. It is true that as the material stands at present there might have been certain exaggerations by one party or the other in this respect and it is also possible that there might have been some misunderstanding on the part of the petitioner as it appears from the affidavit of respondent No. 2 himself dated the 8th May, 1956, that one of the members of the Tribunal had asked Mr. Agarwal, counsel for the petitioner before the Tribunal, not to waste time in arguing over one of the issues and it is in the report of the Chairman that Issue No. 7(a) was not pressed by the counsel for respondent No. 2 before the Tribunal although it was dealt with to a certain extent by the counsel for the petitioner. It may be that because no arguments were advanced on behalf of respondent No. 2, who was the petitioner before the Tribunal, on Issue No. 7(a) the counsel for the petitioner might not have addressed his full arguments on that point. Of course, so far as Issue Nos. 15 & 16 are concerned it appears from the reports of the Chairman and the members of the Tribunal that they were argued out fully on behalf of both the parties and in this respect the allegations of the petitioner may not be correct. But simply on this ground we do not think it proper to penalise him so much as to dismiss his petition altogether, specially when this objection has been taken at such a late stage. The preliminary objection of Mr. Tyagi is, therefore, overruled.

We may now set out the points for decision which amerge from the arguments of the learned counsel of the parties:—

(1) Whether the majority judgment as regards the rejection of the nomination paper of respondent No. 2 by the Returning Officer is erroneous on its face and is liable to be quashed on a writ of certiorari?

(2) If the nomination paper of respondent No. 2 is held to be properly rejected would he have any *locus standi* to file an election petition and raise questions of major and minor corrupt practices alleged by him in his petition?

(3) Is the judgment of the majority erroneous on its face on issue No. 7(a) regarding the obtaining of assistance by the petitioner from Shri Bakshi, Executive Engineer, Irrigation, Bundi?

(4) Are the minority and majority judgments erroneous on their face so far as Issues Nos. 15(a) and 16(a) are concerned?

(5) Whether the majority judgment is erroneous on its face so far as Issue No. 16(b) relating to the payment of travelling allowances and not entering them in the return of election expenses is concerned?

(6) Is the order of the Tribunal so far as disqualification of the petitioner is concerned illegal and *ultra vires*?

(7) Is the order of the Tribunal dated the 30th April, 1956 liable to be quashed?

We now proceed to consider the above points one by one.

Point No. (1)—We may at the outset give some of the relevant provisions of the Act and the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951 (hereinafter to be referred to as the Rules).

Sec. 2(1)(g)—“prescribed” means prescribed by rules made under this Act.

Section 33(1)—On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer or seconder between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the Returning Officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two persons referred to in sub-section (2) as proposer and seconder.

Sec. 33(5)—On the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls.

Provided that the Returning Officer may—

- (a) permit any clerical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls; and
- (b) where necessary, direct that any clerical or printing error in the said entries shall be overlooked.

Sec. 33(6)—If at the time of the presentation of the nomination paper the Returning Officer finds that the name of the candidate is not registered in the electoral roll of the constituency for which he is the Returning Officer, he shall for the purposes of sub-section (5) require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such roll.

Sec. 35.—The Returning Officer shall, on receiving the nomination paper under sub-section (1) of section 33, inform the person or persons delivering the same of the date, time and place fixed for the scrutiny of nominations and shall enter on the nomination paper its serial number, and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him, and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of the persons who have subscribed the nomination paper as proposer and seconder.

Sec. 36—(1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer and one seconder of each candidate, and one other person duly authorised in writing by each candidate but no other person, may attend at such time and place as the Returning Officer may appoint; and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objections or on his own motion, after such summary inquiry, if any, as he thinks necessary, refuse any nomination on any of the following grounds:—

- (a) That the candidate is not qualified to be chosen to fill the seat under the Constitution or this Act; or
- (b) That the candidate is disqualified for being chosen to fill the seat under the Constitution or this Act; or
- (c) That a proposer or seconder is disqualified from subscribing a nomination paper under sub-section (2) of section 33; or
- (d) That there has been any failure to comply with any of the provisions of section 33 or section 34; or
- (e) That the signature of the candidate or any proposer or seconder is not genuine or has been obtained by fraud.

(3) Nothing contained in clause (c), clause (d) or clause (e) of sub-section (2) shall be deemed to authorise the refusal of the nomination of any candidate, on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character.

(5), (6) & (7).....

*Rule 4 of the Rules*—Every nomination paper delivered under sub-section (1) of section 33 or under that sub-section read with sub-section (4) of section 39 shall be completed in the form specified in Schedule II.

#### *Schedule II of the Rules—*

##### Nomination paper

##### (Rule 4)

Election to the.....

Election to the.....

1. Name of the constituency.

2. Name of candidate.

3. Father's/Husband's name

4. Age.

5. Address.

6. If the candidate is a member of the Scheduled Castes or of the Scheduled Tribes or of a tribe in any autonomous district of Assam. State the particular caste or tribe, and the area in relation to which such caste or tribe is one of the Scheduled Castes or Scheduled Tribes, as the case may be.

7. Constituency in the electoral roll of which the name of the candidate is included.

8. Serial number of the candidate in the electoral roll of the constituency in which his name is included.

9. Name of the proposer.

10. Serial number of the proposer in the electoral roll of the constituency.

11. Number of the proposer in the list maintained under sub-section (1) or sub-section (2) of section 152 of the Representation of the People Act, 1951.

12. Signature of the proposer.

13. Name of the Seconder.

14. Serial number of the seconder in the electoral roll of the constituency.

15. Number of the seconder in the list maintained under sub-section (1) or sub-section (2) of section 152 of the Representation of the People Act, 1951.

16. Signature of the seconder.

.....  
 .....  
 .....  
 .....

Foot notes—.....

(6) Where the electoral roll is sub-divided into parts and separate serial numbers are assigned to the electors entered in each part, a description of the part in which the name of the person concerned is entered must also be given in items Nos. 8, 10 & 14.

The entries in items Nos. 10 & 14 in the nomination paper, Ex.P2/A, were not defective as the serial numbers were given from the current electoral roll of 1952. In Item No. 8, however, the serial number of respondent No. 2 was given as 3834 of Bhimganj Mandi ward No. 1 Kotah. Though it was not specifically stated that the number was from the electoral roll of 1951 yet a certified copy of the entry in the electoral roll of 1951 was appended to it and it was mentioned in item No. 8 that a certified copy had been so appended. It thus becomes obvious that the serial number stated at item No. 8 of Ex.P2/A related to the electoral roll of 1951. The argument of Mr. Tyagi is that since the year of the electoral roll was not mentioned in Ex. P2/A the entry of serial number at item No. 8 may as well be taken to be from the electoral roll of the year 1952, and therefore, the insertion of the serial number 3834 amounts only to the giving of a wrong number from the current electoral roll of 1952. This argument cannot be accepted in the face of the certified copy of the electoral roll of 1951 filed along with Ex. P2/A and the clear mention at Item No. 8 in Ex.P2/A that a certified copy had been appended to it.

Before dealing with the arguments of the learned counsel for the petitioner we may say that it has been contended by Mr. Tyagi that the order of the Returning Officer with respect to the three of the four nomination papers filed by respondent No. 2 was improper. His case is that the order of rejection was not proper only so far as nomination paper Ex.P2/A of the Election Tribunal's record is concerned. He has also conceded that there was no clerical or printing error in relation to the entry of electoral roll number in Ex. P2/A. He has also conceded that even in the matter of clerical error with respect to names and number correction can be made only at the presentation stage and not thereafter. Although these circumstances it is not necessary for us to refer to any authority as to whether putting down of serial number quite different from the relevant electoral roll is a clerical error or not yet we may to an English authority, referred to by Mr. Pathak on this point in *Gothard and others v. Clarke and others* (1). In that case a candidate was nominated at a municipal election for the office of town councillor by 38 & 39 Vict. c.40 (The Municipal Elections Act, 1875), s.1, sub-s 2, Sched. 1. Form 2 and Note. It was required that the number on the burgess roll of a burgess nominating a candidate should be stated in the nomination paper. In the nomination paper, in question, instead of the right number 695 the number 704 appeared and an objection was taken thereto. It was allowed by the Returning Officer although no one had been or could be misled by the mistake. It was held that the decision of the Returning Officer was correct and the effect of the mistake was not remedied by and could not be amended under the provisions of 41 & 42 Vict. c. 26 s. 41 and 35 & 36 Vict. c. 33, s. 13. At page Mr. Pathak on this point in *Gothard and others v. Clarke and others* (1). In 261 (1) V Common Pleas Division 253 of the judgment the following observations of Grove J. appear:

"There may be a clerical error, such as by making the figure 9 with too short a tail so as to look like the cypher. It may be, although I do not give judgment on it, that the mayor is to treat that reasonably. There may be a clerical error which is obviously a mere clerical error *ex facie*. Or suppose the name Jones were written "Jone", the letter "s" being omitted. The mayor might perhaps be justified in treating that as the subject of correction. But here we have a real change of number. It is not "704" but "695" not a figure is right, and there is no possibility of this being a mere clerical error".

In the present case also the number given in Ex. P2/A materially differs from the number of the current electoral roll. The number given in Ex. P2/A is 3834 whereas the number in the electoral roll of 1952 is 2012. Thus, it will be seen

that here too not a single figure of the Serial Number of Ex. P2/A tallies with the figures of the S. No. of the electoral roll of 1952. Moreover, the serial number given in Ex. P2/A is from a roll which had become obsolete before the day of nomination. It is clear that that number is not of the electoral roll of 1952 but of 1951. We have, therefore, no hesitation in holding that the error in Ex. P2/A in this behalf was neither a clerical nor a printing error. The proviso A or B of sub-section (5) of section 33 of the Act, therefore, could not be invoked under the circumstances of this case. It cannot be denied that Ex. P2/A was defective in the matter of Serial number. Mr. Tyagi's argument, however, is that the defect was only technical and was not of a substantial character. Ex. P2/A ought, not, therefore, to have been rejected on this ground.

On behalf of the petitioner it was argued by Mr. Pathak that there are five grounds on which a nomination paper can be rejected under section 36(2) of the Act. All these 6 grounds are independent grounds and if the nomination paper is hit by any of those 5 grounds it should be rejected by the Returning Officer. The ground No. (d) which says that the nomination should be refused if there has been any failure to comply with any of the provisions of section 33 or 34 is just as important as the remaining grounds (a), (b), (c) or (e). The provisions of section 33(1) are mandatory and the conditions for a valid nomination paper are:

- (1) that it should be filed on or before the date appointed in cl. (a) of sec. 30;
- (2) that it should be filed either by the candidate in person or by his proposer or seconder;
- (3) that it should be filed between the hours of 11 o'clock in the forenoon and 3 o'clock in the afternoon;
- (4) that it should be delivered to the Returning Officer at the place specified in this behalf in the notice issued under sec. 31;
- (5) that it should be completed in the prescribed form; and
- (6) that it should be subscribed by the candidate himself as assenting to the nomination and by two persons referred to in sub-section (2) as proposer and seconder.

All these conditions are equally important and if any of these conditions is not satisfied it cannot be said that there had been a valid nomination. It was argued that in this case the defect was not of an unsubstantial character but was of substantial nature and, therefore, under section 36(4) the Returning Officer could not overlook this defect. It was argued that the objection of the petitioner was not with respect to the identity of the respondent No. 2 but it was with respect to the non-compliance with the mandatory provisions of sec. 33(1). The majority of the Election Tribunal should not have been influenced by the fact that no question of identity was raised and respondent No. 2 was a well known person. It was argued that this constitutes an error apparent on the fact of the record. Several authorities were cited to show that the defect like the present one could not be said to be *not of substantial character* within the meaning of sec. 36(4) of the Act.

The learned counsel for the petitioner, *inter alia*, cited the following authorities. He also made a passing reference to some of the decisions of the Election Tribunals in India constituted under the Act but did not lay much stress upon them because they could not be treated as authority for this court.

- (1) Gothard and others V. Clarke and others (1)
- (2) Baldwin and others V. Ellis and others (2)
- (3) The Queen V. Tugwell (3)
- (4) Rattan Anmol Singh and another V. Ch. Atma Ram and others (4).

We have already dealt with the case of Gothard (1) above. In Baldwin's case 4 persons were nominated for election as rural district councillors and in column 5 under the heading "How qualified" it was merely stated that the persons nominated were "Local Government electors" and did not state the name of the parish for which they were qualified as local Government electors, as required by r.4 of the Rural District Councillors Election Order, 1898. The Deputy Returning Officer rejected the nomination paper as being invalid because the parish within the poor law union for which qualification was claimed was

- (2) i K. B. 1926 p. 273
- (3) III Q. B. 1867-8 p. 704
- (4) A. I. R. 1954 Supreme Court P. 510

not stated. Upon an election petition it was held that the omission to state in the nomination paper the name of the parish for which the person nominated was qualified as a local government elector was a non-compliance with the requirements of r.4 of the Rural District Councilors Election Order, 1898, and that the omission was not an "inaccurate description" of the person nominated within r.33 of the Order of 1898, but was a non-compliance with the requirements of r.4 of that Order, and therefore was not cured by r.33. In the case of *Queen V. Tugwell* (3) by sec. 32 of the Municipal Corporation Act the voting paper was required to contain the Christian names and surnames of the persons for whom the burgess votes, with their places of abode and description. By s.142 no inaccurate description of any person, body corporate, or place, named..... in any roll list, notice, or voting paper required by the Act was to hinder the full operation of the Act in respect of such persons etc. provided that the description of such person, etc. be such as to be commonly understood. The voting paper, in question, in that case contained the Christian name and surname of the candidate and his place of abode and nothing more. It was held that it was not an inaccurate description, but a total omission of the description of the candidate and was not cured by s.142, and the vote was therefore invalid. In *Rattan Anmol Singh's case* (4) the proposer and seconder were illiterate and so placed their thumb marks instead of signatures. These thumb marks were not "attested" by the Returning Officer as required by sec.2(1)(k) of the Act read with rule 2(2) of the Rules. It was held that the defect was not a defect of unsubstantial nature.

Mr. Pathak's argument is that sec. 36(4) of the Act does not apply to a case like the present where there was a total omission to give the serial number of the respondent No. 2 from the electoral roll which was in force. It is not a case of inaccurate description which might be taken to be a defect of an unsubstantial character. It was argued that the view taken in the minority judgment that the defect in the present case was not of unsubstantial character was in accordance with law and that the view taken in the majority judgment was not only against law and but that judgment was erroneous on its face on this point. It was further argued that the Legislature places special emphasis upon the serial number and name of the candidate in the nomination paper and for this we were referred to sub-section (5) of sec. 33.

On behalf of respondent No. 2 Mr. Tyagi strongly relied upon the ruling of their Lordships of the Supreme Court in *Karnail Singh V. Election Tribunal, Hissar and others* (5) and also referred to a recent ruling of their Lordships of the Supreme Court in the case of *Pratap Singh V. Shri Krishna Gupta and others* (6). He also referred to certain decisions of the Election Tribunals under the Act.

We have considered the arguments of both the learned counsels on this point. We have already held above that the defect with which we are concerned was neither a clerical nor a printing error to which Proviso A or B to Sec. 33 (5) could apply. We may now examine whether this defect could be rectified or overlooked after the presentation stage. We have given all the relevant provisions of the Act and Rules about and from that it would be found that no power of amendment of the nomination paper has been conferred upon the Returning Officer after the presentation stage, and the power at that stage can be exercised only in the matter of clerical error in regard to the names and numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls. The defect, in question, amounting to failure to comply with the provisions of Sec. 33(1) regarding the nomination paper being completed in the prescribed form could be disregarding only if it were a technical defect not of a substantial character within the meaning of sub-section (4) of sec. 36. In *Rattan Anmol Singh's case* (4) the nomination paper was completed in all other respects except that the thumb marks of the illiterate proposer and seconder were not authenticated in the manner prescribed. Sec. 2 (k) of the Act defines the word "Sign" as follows:

"sign" in relation to a person who is unable to write his name means authenticate in such manner as may be prescribed. Rule 2 (2) of the Rules prescribes the manner authentication. It is as follows:

"For the purposes of the Act or these Rules, a person who is unable to write his name shall, unless otherwise expressly provided in these rules, be deemed to have signed an instrument or other paper if he has placed a mark on such instrument or other paper in the presence

(5) 10 E.L.R.P. 189.

(6) A.I.R. 1956 Supreme Court 140.

of the Returning Officer or the Presiding Officer or such other officer as may be specified in this behalf by the Election Commission and such officer on being satisfied as to his identity has attested the mark as being the mark of such person."

The nomination paper, in question, in Rattan Anmol Singh's case did not bear the attestation of the Returning Officer as required by rule 2 (2). Their lordships held that the defect could not be over-looked and upheld the order of rejection of the nomination paper of the Returning Officer. The observations of their Lordships which are relevant to this case are as follows:

"(14) That sub-section 36(4) is as follows:

"The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character".

The question, therefore, is whether attestation is mere technical or unsubstantial requirement. We are not able to regard it in that light. When the Law enjoins the observance of a particular formality it cannot be disregarded and the substance of the thing must be there. The substance of the matter here is the satisfaction of the Returning Officer at a particular moment of time about the identity of the person making a mark in place of writing a signature. If the Returning Officer had omitted the attestation because of some slip on his part and it could be proved that he was satisfied at the proper time, the matter might be different because the element of his satisfaction at the proper time which is of the substance, would be there, and the omission formally to record the satisfaction could probably in a case like that; be recorded as an unsubstantial technicality.

But we find it impossible to say that when the law requires the satisfaction of a particular officer at a particular time his satisfaction can be dispensed with altogether. In our opinion, this provision is as necessary and as substantial as attestation in the cases of a will or a mortgage and is on the same footing as the "subscribing" required in the case of the candidate himself. If there is no signature and no mark the form would have to be rejected and their absence could not be dismissed as technical and unsubstantial. The "satisfaction" of the Returning Officer which the Rules require is not, in our opinion, any the less important and imperative.

(15) The next question is whether the attestation can be compelled by the person concerned at the scrutiny stage. It must be accepted that no attempt was made at the presentation stage to satisfy the Returning Officer about the identity of these persons but evidence was led to show that this was attempted at the scrutiny stage. The Returning Officer denies this, but even if the identities could have been proved to his satisfaction at that stage it would have been too late because the attestation and the satisfaction must exist at the presentation stage and a total omission of such an essential feature cannot be subsequently validated any more than the omission of a candidate to sign at all could have been. Section 36 is mandatory and enjoins the Returning Officer to refuse any nomination when there has been "any" failure to comply with "any" of the provisions of section 33....."

The only jurisdiction the Returning Officer has, at the scrutiny stage is to see whether the nominations are in order and to hear and decide objections. He cannot at that stage remedy essential defects or permit them to be remedied. It is true he is not to reject any nomination paper on the ground of any technical defect which is not of a substantial character but he cannot remedy the defect. He must leave it as it is. If it is technical and unsubstantial it will not matter. If it is not, it cannot be set right".

Now it appears from their Lordships judgment that provisions of section 33(1) are mandatory and non-compliance thereof will entail the rejection of the nomination paper. Their Lordships have expressly said that if there be no signature and no mark, the form would have to be rejected and their absence could not be dismissed as technical and unsubstantial. Now subscribing of the nomination paper by the candidate and by the proposer and seconder is also one of the conditions laid down by section 33(1). The completion of the nomination paper also in the prescribed form is another condition laid down by section 33. Therefore, unless the defect in the completion of the nomination paper in the prescribed form is only a technical defect of unsubstantial character within the meaning of sec. 36(4) it cannot be overlooked and the nomination paper has to be rejected.



Let us now examine whether the defect, in question, in this case is a technical defect not of substantial character. Their Lordships of the Supreme Court in the case of Pratap Singh (6) observed as follows:

"Tendency of the Courts towards technicality is to be deprecated, it is the substance that counts and must take precedence over mere form. Some rules are vital and go to the root of the matter they cannot be broken other are only directory and a breach of them can be overlooked provided there is substantial compliance with the rules read as whole and provided no prejudice ensues; and when the legislature does not itself state which is which judges must determine the matter and exercising a nice discrimination, sort out one class from the other along broad based commonsense lines."

That was a case under the C.P. and Berar Municipalities Act (2 of 1922). Several persons filed their nomination papers for the office of President of the Municipal Committee of Damoh. The nominations were made on forms supplied by the Municipal Committee but it turned out that the forms were old ones that had not been brought upto date. Under the old rules candidates were required to give their caste but some time before the nomination papers were filed, this was changed. Instead of caste their occupation had to be entered. The only person who kept himself abreast of the law was the first respondent. He struck out the word "caste" in the printed form and wrote in "occupation" instead and then gave his occupation, as the new rule required, and not his caste. All the other candidate, including the appellant, filled in their forms as they stood and entered their caste and not their occupation. The first respondent raised an objection before the Supervising Officer and contested that all the other nominations were invalid and claimed that he should be elected as his was the only valid nomination paper. The objection was overruled and the election proceeded. The appellant secured the highest number of votes and was declared to be elected. The first respondent thereupon filed the election petition out of which the appeal before their Lordships arose. He failed in the trial court which held that the defect was not substantial and so held that it was curable. This was reversed by the High Court on revision who relied upon the decision in Rattan Anmol Singh's case and held that "any failure to comply with any of the provisions set out in the various rules is fatal and that in such cases the nomination paper must be rejected. Their Lordships reversed the judgment of the High Court and made the observations noted above. Their Lordships relied upon the provisions of sec. 23 of the C.P. and Berar Municipalities Act which ran as follows:

"Anything done or any proceeding taken under this Act shall not be questioned.....on account of any defect or irregularity not affecting the merits of the case."

It was in the light of this provision that their Lordships construed the Rules relating to the filing of the nomination papers under the said Act. Rule 9(1) (i) & (iii) of the Rules framed under the said Act ran as follows:

"Rule 9(1) (i)—.....each candidate shall.....deliver to the Supervising Officer a nomination paper completed 'in the form appended' and subscribed by the candidate himself as assenting to the nomination and by two duly qualified electors as proposer and seconder."

Rule 9(1) (iii)—"The Supervising Officer shall examine the nomination papers and shall decide all objections which may be made to any nomination and 'may' either on such objection or on his own motion, after such summary enquiry, if any, as he thinks necessary, refuse any nomination on any of the following grounds."

The argument of the first respondent was that the nomination paper of the appellant was not completed in the form appended as required by rule 9(1) (i) and, therefore, the Returning Officer had no option but to refuse the nomination. Their Lordships observed as follows:

"Reading Rule 9(1) (iii) (c) in the light of section 23, all that we have to see is whether an omission to set out a candidate's occupation can be said to affect 'the merits of the case'. We are clear it does not. Take the case of a man who has no occupation. What difference would it make whether he entered the word 'nil' there, or struck out the word 'occupation' or placed a line against it, or just left it blank? How is the case any different, so far as the merits are concerned, when a man who has an occupation does not disclose it or misnames it, specially as a man's occupation is not one of the qualifications for the office of

President. We are clear that this part of the form is only directory and is part of the description of the candidate; it does not go to the root of the matter so long as there is enough material in the paper to enable him to be identified beyond doubt".

It would be clear that by virtue of section 23 of the Municipalities Act, in question, any defect or irregularity not affecting the merits of the case was curable. Their lordships construed the rule 9 in that light as is quite apparent from their Lordships' observations in para 7 on page 141 of their judgment. The language of section 36(4) is not the same as that of section 23 of the C.P. & Berar Municipalities Act. The ruling in Pratap Singh's case (6) therefore does not exactly apply to the facts of this case. But the general observations of their Lordships too are entitled to great weight.

Under section 36(4) only a technical defect which is not of substantial character can be overlooked. As observed by their Lordships some rules are vital and go to the root of the matter. They cannot be broken; others are only directory and a breach of them can be overlooked provided there is substantial compliance with the rules read as whole and provided no prejudice ensues, and when the legislature does not itself state which is which judges must determine the matter and exercising a nice discrimination, sort out one class from the other along broad based common sense lines. Their Lordships considered the decision in Rattan Anmol Singh's case cited above and observed—

"....That was a case in which the law required the satisfaction of a particular official at a particular time about the identity of an illiterate candidate. That we held, was the substance and said in effect that if the law states that A must be satisfied about a particular matter, A's satisfaction cannot be replaced by that of B; still less can it be dispensed with altogether. The law we were dealing with there also required that the satisfaction should be endorsed on the nomination paper. That we indicated was mere fact and said at p. 513.—

"If the Returning Officer had omitted the attestation because of some slip on his part and it could be proved that he was satisfied at the proper time, the matter might be different because the element of his satisfaction at the proper time, which is of the substance, would be there, and the omission formally to record the satisfaction could probably, in a case like that be regarded as an unsubstantial technicality".

It would be seen that their Lordships did not dissent from the view taken by them in Rattan Anmol Singh's case but considered that the defect with which their Lordships were concerned did not go to the root of the matter and was, therefore, curable under the special phraseology of section 23 of the C.P. & Berar Municipalities Act. Examining the provisions of section 33(1) we find that a nomination paper should be complete in the prescribed form. The prescribed form is given in Schedule II of the Rules. At S. No. 2 is to be given the name of the candidate and at No. 8 is to be given the serial number of the candidate in the electoral roll of the constituency in which his name is included. When we read sub-section (5) of section 31 we find that the Returning Officer has to satisfy himself that the names and the electoral roll numbers only of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls and if any clerical error in the nomination paper is regard to the said names and numbers is found he is required to permit them to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls. This provision to our mind shows that the names and the electoral roll numbers of the candidate and his proposer and seconder are considered to be more important than any other entries of the nomination form and as there is no provision in the Act for their correction at a subsequent stage even though there is a clerical or printing error in them the Returning Officer has been invested with the power of permitting them to be corrected at the presentation stage because if no corrections were made at that stage the nomination paper would be invalidated. The legislature, to our mind, thought that clerical or printing errors in other entries might be ignored under section 36(4) of the Act and, therefore, it did not cast a duty upon the Returning Officer of satisfying himself at the presentation stage that they are the same as those entered in the electoral rolls. Section 33 envisages that the name and serial number of the candidate must find place in the form of nomination paper and has not left it to the discretion of the rule making authority. Whereas in other matters it has been left to the rule making authority to include such items in the form of the nomination paper as it considers proper and necessary. From this too we are of opinion that the name and the serial number

are matters of substance and not only of form. The reason appears to be that without the name and the serial number of the relevant electoral roll the Returning Officer might find a lot of difficulty in satisfying himself that the nomination paper was being filed by an eligible person. The Legislature has intended that this question of eligibility must be found out on a comparison of the name and serial number given in the nomination paper with those given in the relevant electoral roll at the presentation stage. It is not to be left for comparison at any subsequent stage.

In the judgment of the majority of the Tribunal the decision of the Election Tribunal Baroda in *Pranlal Thakorlal Munshi Vs. Indubhai Bhailalbhai Amin* and others (7) has been referred to. In that case it was held that the omission to fill in the age of a candidate in column 4 of the nomination paper was a substantial defect and could not be cured under section 36(4). The majority judgment does not differ from this view but has differentiated that case on the ground that age is more important in the nomination paper than a serial number and their reasoning is that the age decides the question of qualification of a candidate. It is true that persons below a certain age are not allowed to stand as candidates but the reasoning of the majority is not correct because the question of age can be found out from the entries in the electoral roll and if the defect of omission of serial number in the nomination paper can be cured by filing of a certified copy from the relevant electoral roll the defect about the omission of age can also be likewise cured. To our mind the distinction made by the majority between age and serial number is without a difference.

The majority of the tribunal also differentiated the case of age from the case of the names and numbers on the ground that no power of correction of a clerical or printing error in the matter of age has been given to the Returning Officer even at the presentation stage; whereas no such power has been given in the matter of names and serial numbers. The majority of the Tribunal overlooked the fact that the power was given of the correction of clerical error in the names and numbers of the candidate and his proposer and seconder because these are the two factors only to which the Returning Officer has to pay special heed at the time of the presentation of the nomination paper. If the name or number differs from that recorded in the electoral roll the nomination paper would become invalid and, therefore, to save the candidate from such a catastrophe provision has been made that if there is a clerical error in the names and numbers it might be corrected then and there in order to make it correspond to the entries in the electoral roll. It cannot be contended that the error in regard to name is less important than the error in regard to age and it would be formed that the names and numbers have been given the same importance under sub-section (5) of section 33. Therefore, it cannot be said that the number is less important than age. In fact, if the serial numbers and names are given correctly in the nomination paper and are in accordance with the entries in the electoral roll there might be no difficulty for the Returning Officer to find out that the candidate or his proposer and seconder were entitled respectively to stand as a candidate and propose and second the candidature. If they are wrong then even if all other entries might be correct it might be very difficult if not impossible for the Returning Officer to satisfy himself that the names of the candidate and his proposer and seconder are entered in the relevant electoral rolls. The majority judgment seems to be of the view that if it is shown even at the time of scrutiny that a candidate is eligible for nomination no matter what are the defects in the completion of the nomination paper in the prescribed form, the nomination paper should not be rejected. We do not think that in the face of the provisions of section 33 read with section 36(4) of the Act this is a correct view. If such a view were to prevail then the mandatory provisions regarding the completion of the nomination paper in the prescribed form can be disregarded with impunity and the candidate can insist upon his nomination by producing evidence about his eligibility at the scrutiny stage. We find that the Act does not allow even the corrections of clerical errors beyond the presentation stage. This will be of no importance if errors howsoever material are overlooked at the scrutiny stage. To our mind, the law requires that there should be enough material in the nomination paper itself to enable the Returning Officer without any difficulty to satisfy himself on a reference to the relevant electoral roll only that the candidate is eligible by virtue of his name being entered in the electoral roll. This is possible only if at least the serial number and the name are correctly given. If there are only clerical mistakes it may not be difficult to find out the name of the candidate in the relevant electoral roll and it will be possible for the Returning Officer to have the entries regarding serial

number and name corrected so as to tally with the entries in the electoral roll. But if the name or the serial number is not given at all or is totally incorrect it would be very difficult for the Returning Officer, if not altogether impossible, to find out the name of the candidate on the relevant electoral roll. In our support we have the observations of their Lordships of the Supreme Court in the case of Pratap Singh (6) which are as follows:

"We are clear that this part of the form is only directory and is part of the description of the candidate; it does not go to the root of the matter so long as there is enough material in the paper to enable him to be identified beyond doubt."

NOTE: By this part of the form their Lordships meant the insertion of the word "occupation in the nomination paper."

From these observations it can be gathered that if there is not enough material in the nomination paper itself to enable the candidate to be identified beyond doubt, the defect would be taken as going to the root of the matter. With regard to the omission to give the serial number from the relevant electoral roll we are of opinion that the respondent No 2 failed to place enough material in the nomination paper Ex P2/A from which the Returning Officer might have been able to satisfy himself that the name of respondent No. 2 was on the relevant electoral roll. The furnishing of a copy from the relevant electoral roll at the time of scrutiny cannot said to amount to the putting of enough material in the nomination paper in order to enable the Returning Officer to be satisfied that the candidate was an eligible candidate. The chairman of the Tribunal who has given the minority judgment on this point has correctly realised the importance of the serial number and the name.

Learned counsel for the petitioner cited the ruling of the common pleas Division in the case of Gothard and others Vs. Clarke and others (1). In that case the number on the burgess roll of a burgess nominating a candidate at a municipal election for the office of the town councillor was not given in the nomination paper and instead of the right number which was 695 the number was wrongly given as 704. The returning officer rejected the nomination paper on the ground of this defect. It was argued in that case that the provision of the Act so far as it related to the insertion of the number in the burgess roll of the burgess subscribing is directory only and imposes no obligation. This argument was based upon subsection (2) of section 1, which ran as follows:

"The nomination paper shall be in the form No 2, or to the like effect."

It was held that it could not be understood how it could be seriously contended the giving that which was absolutely wrong could be giving that which was "to the like effect". Further it was observed:

"If, again, the insertion of a wrong number is not to invalidate the nomination paper, the failure to insert any number cannot render it insufficient."

In that case the candidate was so well known that no person could be misled and in fact no person was misled. But this was not considered enough to validate the defect and it was observed

"If this test was the one intended to be applied the mayor in every case, when an objection like the present was taken, would have to hear evidence, and decide how far the inaccuracy was likely to misled, or had misled, such loose proceeding never could have been contemplated by the legislature and the inconvenience of it is too obvious for argument."

Of course, this case is upon the interpretation of the provisions of the Municipal Elections Act, 1875 of England. But the observations, quoted above, furnish some valuable guidance for this case also where the Act has considered recording of the serial number in the nomination paper to be of importance. It also shows that if a defect of a substantial character is made in the filing of the nomination form the fact that the candidate was well known and there could be no mistake about his identity would not rectify the defect and validate the nomination paper.

In Baldwin's case (2) nomination paper was filed under the Municipal Corporations Act, 1882, for election as rural district councillors and the omission was not with respect of the serial number. We do not think that it is of much assistance in this case.

Great reliance was placed by the learned counsel for respondent No. 2 on the decision of their Lordships of the Supreme Court in Karnail Singh's case (5). The majority judgment of the Tribunal has also relied upon this decision. It is clear from that judgment that the only defect pointed out in the nomination form was that the name of the sub-division was not stated at column No. 8 along with the number on the electoral roll which was required by Foot Note No. 6 of the nomination paper to be recorded where the electoral roll is sub-divided into parts and separate serial numbers are assigned to the electors entered in each part. We have gone through the judgment of the Election Tribunal also in that case, and find that there were two sub-divisions in the constituency and separate electoral rolls were prepared for each of them but the electoral roll of one of the sub-divisions had the names of not more than 800 voters, and it was only the electoral roll of the other sub-division which contained the names of more than 1400 electors. The serial number of the candidate, in question, was 1400, and therefore, the Returning Officer could easily find out the name of the candidate, in question, on the relevant electoral roll. There was sufficient material in the nomination paper of the candidate, in question, to enable the Returning Officer to compare the name and the serial number of the nomination paper with the name and serial number in the relevant electoral roll. The entry about the serial number in that case could at worst be said to suffer inaccurate description. The defect was not of total omission of the serial number of the relevant list. No support can be drawn from this ruling for the view that whatever mistake may be made in the completion of the nomination paper in the prescribed form it can be overlooked if at the time of scrutiny the candidate can show from other material that he was entitled to stand as a candidate.

To our mind, the giving of the serial number from a superseded electoral roll and not from the electoral roll in force is equivalent to giving no number at all and it cannot be said to be a technical defect of unsubstantial character within the meaning of sec. 36(4) of the Act. On a perusal of the minority judgment itself we find that it took the view that the defect in this case of substantial character but the learned members were influenced by the fact that there was no dispute about the identity of respondent No. 2 and that he was able to produce a certificate copy of the entry regarding his name in the relevant electoral roll. The following extracts from their judgment may be usefully given:

"But, section 36 sub-clause 4 reads as under:—

"The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character."

Further sub clause 2 of section 36 provides:—

"That the Returning Officer shall then (at the time of scrutiny of the nomination paper) examine the nomination papers and shall decide all objections, which may be made to any nomination, and may, either on such objections or on his own motion, after such summary inquiry, if any, as he thinks necessary refuse any nomination paper on any of the following grounds,

(d) That there has been any failure to comply with any of the provisions of Section 33 or Section 34."

It will thus be seen that at the scrutiny stage it is the duty of the Returning Officer under Section 36 sub-clause 2, if a defect is pointed out to him or noticed by him in the nomination paper, to hold an enquiry which has to be of a summary nature and thereafter refuse any nomination paper on the ground that there has been a failure to comply with any of the provisions of Section 33. But his duty does not end there. His further duty under sub-clause 4 of Section 36 is that he shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character. It cannot, therefore, be said that just because there has been a failure to comply with any of the provisions of Section 33, as in the present case, the Returning Officer can reject the nomination paper.

In the present case, by making a wrong entry relating to his serial number in the electoral roll, the petitioner failed to comply with the provisions of section 33 read with Rule 4 of the Rules made under the 1951 Act. But merely because of this failure to comply with the provisions of the Law the Returning

Officer could not reject the nomination paper, it was his duty to hold a summary inquiry to satisfy himself whether the candidate was in fact enrolled as a voter and was qualified for membership of the Legislative Assembly or not. Of course he could not at the scrutiny stage hold a lengthy inquiry.

The only function of the electoral roll number required to be given in column No. 8 of the candidate is, that the Returning Officer may be easily told to trace out the entry relating to the candidate in the electoral roll, to satisfy himself whether the candidate was or was not enrolled or was or was not qualified. In the present case it is an admitted fact that the candidate produced a certified copy of the entry in the correct electoral roll of Ladpura constituency relating to him. Under Section 36 Sub-Section 7(A) the production of a certified copy of an entry made in the electoral roll of any constituency is a conclusive evidence of the right of the elector named in that entry to stand for election etc. Therefore, if the Returning Officer had discharged his duties prescribed by Sub-section 2 of section 36 and made a summary inquiry by just caring to look into the certified copy of the entry, he could find out that the name of the petitioner was entered in the correct electoral roll. But the Returning Officer failed in his duty to do so. *Had a certified copy of the entry made in the correct electoral roll of the Ladpura constituency not been produced by the petitioner at the scrutiny stage for the examination and the satisfaction of the Returning Officer that he was enrolled as a voter in the electoral roll of Ladpura constituency, the defect in his nomination paper relating to the electoral roll number in column No. 8 of the nomination paper would have been, though technical, but of a substantial character. Because the Returning Officer, in that case, could not without holding a lengthy inquiry find out whether or not the petitioner was enrolled in the correct electoral roll of Ladpura constituency. He had no duty to examine the whole list of Ladpura constituency and hold a lengthy inquiry to discover this fact as to whether or not the petitioner was enrolled. He could in that case have been justified in rejecting the nomination paper on account of the technical defect of giving a wrong electoral roll number in column No. 8 of the nomination paper as the defect would have been of a substantial character.* But in the present case since the petitioner was present and made a certified copy of the entry relating to him in the electoral roll readily available to the Returning Officer at the time of the scrutiny of his nomination papers, it cannot be said that the Returning Officer could have experienced any difficulty in finding out that the petitioner was duly enrolled. Therefore, this defect in the nomination paper list its substantial character".

It would appear from the above extract that in the view of the majority also the defect in this case could not be said to be of a non-substantial character. If a certified copy of the electoral roll of 1952 had not been produced at the time of scrutiny the two members who decided this point against the petitioner would have been prepared to hold that the nomination paper in this case was not improperly rejected. Whether the defect was substantial or not ought to have been determined from the nature of the defect itself and should not have been made to depend upon what further evidence was produced at the scrutiny stage. If the nomination paper had been completed in the prescribed form as required by Section 33(i) and the objection of the petitioner at the time of scrutiny were that respondent No. 2 was not the person whose name appeared at a particular serial number of the relevant electoral roll the question of identity would have arisen. If the petition were that the name of respondent No. 2 was not on the correct electoral roll the question of taking assistance from the electoral roll or from the certified copy of the relevant serial number would have arisen. In the present case the objection was neither with respect to the identity of the respondent No. 2, nor with respect to his name not being in the relevant electoral roll. Therefore, the considerations which weighed with the majority of the Tribunal were not relevant. The simple question was whether Ex. P2/A was completed in the prescribed form and this could be gathered only from a perusal of the nomination paper in the light of the provisions of section 33 of the Act and Rule 4 and Schedule II of the Rules. From a perusal of the nomination paper and the relevant provisions of the Act and the Rules the majority of the Tribunal were of the view that the defect was of a substantial character. In their view even if the electoral roll of Ladpura Constituency of 1952 were produced in the case the defect would not have lost its substantial character. According to them, however, the defect which was substantial lost its substantial character simply because the certified copy from the electoral roll of 1952 was produced at the scrutiny stage. With due reference to the learned members of the Tribunal we feel that the view taken by them was not only erroneous in law but the error is apparent on the face of the judgment.

We now proceed to examine whether certiorari lies in the circumstances of this case? It has been argued by Mr. Pathak that formerly the view taken in English courts that certiorari lies when there was absence or excess of jurisdiction or failure to exercise jurisdiction by the inferior courts as well as when the judgment was erroneous on the face of the record. However, later the scope of the writ of certiorari was somewhat restricted but again in the case of *R. V. Northumberland Compensation Appeal Tribunal*. Ex-parte shaw (8) the scope was amplified and it was held that it goes when on the face of the order the grounds on which an inferior court had made it were not such as to warrant the decision to which it had come. We have perused the judgment in the aforesaid case and find that it is an authority for the proposition that a writ of certiorari goes when on the face of it the judgment or order of the inferior court is erroneous. There was an appeal in the court of Appeal against the judgment of the Division Court, referred to above. But the view taken by the Division Court was upheld and the appeal was dismissed. In the appellate judgment in the aforesaid case *R. Vs. Northumberland Compensation Appeal Tribunal*. Ex-parte shaw (9) it was held that certiorari to quash the decision of a statutory tribunal lay not only where the tribunal had exceeded its jurisdiction but also where an error of Law appeared on the face of the record. This court too has held in *Nanag Ram* and another *V. Ghinsi Lal* (10) and *Srinivas V. Collector, Sawai Jaipur* and another (11) that certiorari lies when there is a mistake apparent on the face of the record. In the case of *Nanagram* (10) the Collector while fixing the standard rent of premises had wrongly interpreted the words "let on the 1st day of September 1939" occurring in Section 1(b) (1) of II Schedule of the Jaipur Rent Control Order of 1947 as meaning the premises which were given on rent on the 1st day of September, 1939. This court held on a petition being filed for a writ of certiorari that the plain meaning of section 1 of Schedule II was that if the premises were already on hire on 1st September 1939, the rent payable on that day should be regarded as basic rent for fixing the standard rent. The judgment of the Collector was held to be erroneous on its face and was quashed by a writ of certiorari. In the case of *Shrinivas* also (11) a similar question arose and it was held that on a bare reading of the Collector's order it could be known that fair rent in that case could be determined under Schedule II of the Jaipur Rent Control order of 1947 and the error of law was held to be patent on the face of the record and the Collector's order was quashed. Their Lordships of the Supreme Court also in *T. C. Basappa, V. T. Nagappa* and another (12) and *Hari Vishnu Kamath V. Ahmed Ishaque* and others (13) have taken the same view. In *Basappa's case* (12) it was held that "an error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of Law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision." That was also a case under the Representation of People Act. The Tribunal concerned set aside the election of the successful candidate and an application under Article 226 of the Constitution was filed for a writ of certiorari in the High Court. The High Court holding that there was no evidence whatsoever on some of the issues, set aside the judgment of the Tribunal as it was thought that the constituted a mistake apparent on the face of the record. When an appeal was taken to the Supreme Court their Lordships found in respect of certain issues that it could not be said that there was no evidence whatsoever to support the finding of the Tribunal on those issues and, therefore, allowed the appeal and set aside the judgment of the High Court. However, on one of the issues their Lordships found that there was no evidence and the finding was based merely on a surmise and nothing else. Their Lordships observed:

"If the Tribunal had on the basis of these facts alone declared the appellant to be the duly elected candidate holding that he could have secured more votes than respondent No. 1, obviously this would have been an error apparent on the face of the record, as such conclusion would rest merely on a surmise and nothing else."

These observations of their Lordships go to show that, if there is no evidence with term evidently means "Legally admissible evidence" the judgment can be set aside on a writ of certiorari.

(8) All England Law Report 1951/1 P. 268.

(9) All England Law Report 1951/1 P. 122.

(10) I.L.R. Raj Vol. 1 P. 639.

(11) I.L.R. Raj Vol. 1 P. 724.

(12) A.I.R. 1954 Sup. Court P. 445.

(13) A.I.R. 1955 Sup. Court P. 233.

In Hari Vishnu Kamath's case (13) it was held that "a writ of certiorari can be issued to correct error of Law. But it is essential that it should be something more than a mere error, it must be one which must be manifest on the face of the record". That case was also under the Representation of People Act. The Election Tribunal in that case dismissed the election petition on the ground that the election had not been materially affected by the erroneous reception of the votes. The unsuccessful party moved the High Court of Nagpur under Articles 226 & 227 of the Constitution for the issue of a writ of certiorari on the ground that the decision of the Election Tribunal was illegal and without jurisdiction. There were several points involved which are not material to the facts of the present case. One of the points raised in that case was that the decision of the tribunal that the result of the election had not been materially affected by the erroneous reception of votes was erroneous on its face. Two of the three Judges held that the decision of the Tribunal that the result of the election had not been materially affected by the erroneous reception of the votes was one within its jurisdiction and that it could not be quashed under Article 226 even if it made a mistake of fact or law. The 3rd Judge held that "as in arriving at that decision the Tribunal had taken into consideration irrelevant matters, such as the mistake of the polling officer in issuing wrong ballot papers and its effect on the result of the election, it had acted in excess of its jurisdiction". He accordingly held that the decision should be quashed leaving it to the Election Commission to perform their statutory duties in the matter of the election petition. The petition was, however, dismissed in accordance with the majority opinion. An appeal was taken to the Supreme Court on a certificate granted under Art. 132(1) of the Constitution. One of the points raised before their Lordships of the Supreme Court was that in maintaining the election of the first respondent on the basis of 301 votes which were liable to be rejected, under rule 47(1)(c) the Tribunal was in error. Their Lordships held that this was an error on the part of the Election Tribunal and it was an error manifest on the face of the record, and called for interference by certiorari.

As has been said above in the present case the judgment of the majority is erroneous on its face. They have been influenced by irrelevant considerations and having held that the defect, in question, was of a substantial character though technical and should not have been cured even if the electoral roll were produced at the scrutiny stage, they have held that it lost its substantial character on the production of a certified copy of the electoral roll at the time of scrutiny. The judgment is a speaking judgment and from its very face it can be gathered that it is erroneous. The majority judgment so far as this point which relates to Issue No. 2 regarding proper or improper rejection of the nomination paper Ex. P2/A is concerned is liable to be quashed on a writ of certiorari.

*Point No. (2).—If the nomination paper of respondent No. 2 is held to be properly rejected, would he have any locus standi to file an election petition and raise questions of major and minor corrupt practices alleged by him in his petition?*

Mr. Pathak argued that if the court finds that the judgment of the Tribunal on Issue No. 2 is erroneous on its face and the nomination paper is not found to have been improperly rejected then the respondent No. 2 had no *locus standi* to file the election petition. He argued that an election petition can be filed under section 81 of the Act by any candidate at such election or any elector. It was argued that respondent No. 2 was not an elector in the constituency of Sironj. Further it was argued that he could not be said to be a candidate at the election also because the term "candidate" as defined in section 79(b) means a person who has been or claims to have been duly nominated as a candidate at any election. It was urged that respondent No. 2 was not duly nominated as his nomination paper was rejected. It was argued that he cannot be said to be claiming to have been duly nominated because the expression "claims to have been duly nominated" means not that he simply alleges to have been duly nominated but that his claim to have been duly nominated was correct. Mr. Tyagi argued that the expression "claims to have been duly nominated" does not mean that the claim should be found to be right. It simply means that the candidate considers himself *bona fide* to have been duly nominated. We do not consider it necessary to go into this question, as to our mind without pronouncing any opinion thereon we can grant the relief prayed for in the petition.



*Point No. (3).—Is the judgment of the majority erroneous on its face on issue No. 7(a) regarding the obtaining of assistance by the petitioner from Shri Bakshi Executive Engineer, Irrigation, Bundi.*

On this point also the minority judgment is in favour of the petitioner but the majority judgment is against him. It was argued by Mr. Pathak that the judgment of the majority on this point also is erroneous on its face. The judgment does not disclose that there was any direct evidence to show that the petitioner had obtained any assistance for the furtherance of the prospects of his election from Shri Bakshi. It was argued that all that the judgment shows is that Mr Bakshi said in the presence of some people at Sironj that he was deputed by Shri Brij Sunder Sharma to make a survey of the tank. It was argued that it has not been held that Shri Bakshi was an agent of the petitioner. Whatever therefore, Shri Bakshi said could not have any effect against the petitioner. It was urged that under no provisions of the Evidence Act which applies to the trial of the election petition under the Act such evidence could be admissible against the petitioner, and therefore, the Tribunal having acted upon inadmissible evidence the judgment on this point is erroneous on its face and should be quashed.

On behalf of respondent No. 2 it was argued by Mr. Tyagi that the evidence led by respondent No. 2 before the election tribunal was quite sufficient to prove that it was at the instance of the petitioner that Shri Bakshi had gone to Sironj and canvassed for him.

We have considered the arguments of the learned counsel. We find the majority judgment has considered the evidence of only four witnesses on this point. They were Mohmud Khan (P.W. 10), Ghanshyam Saran Bhargava (P.W. 14), Sheikh Chand Khan (P.W. 17) and Kesri Mal Jain (P.W. 22). Out of these witnesses, Mohmud Khan, Sheikh Chand Khan and Kesri Mal Jain had stated that towards the end of September one day at the tank in the vicinity of Sironj they happened to be present and that Shri Bakshi, Executive Engineer, Irrigation, came to inspect the tank. Shri Bakshi talked to the people who had collected there and said they should vote for the congress candidate, and he would remove their difficulty and repair the tank. It has also been stated in the judgment that Sheikh Chand Khan further deposed that Shri Bakshi had also said that he had been deputed by Shri Brij Sunder Sharma to make a survey of the tank. It, therefore, appears that there was not a single witness who had deposed that Shri Bakshi had been deputed in his presence by Shri Brij Sunder Sharma (the petitioner) to make the survey of the tank. The statement alleged by Chand Khan to have been made by Shri Bakshi as to his having been deputed by the petitioner cannot under the Indian Evidence Act be admissible against the petitioner. We may say here that section 90(3) of the Act has provided that the provisions of the Indian Evidence Act, 1872, shall subject to the provisions of the Act be deemed to apply in all respects to the trial of an election petition. It has not been shown that there is any special provision in the Act which makes the statement like the one, in question, admissible against a third party. Of course, had some witnesses come forward to say that Shri Brij Sunder Sharma had told him that he had deputed Shri Bakshi such a statement would have been admissible as an admission of Shri Brij Sunder Sharma but the statement put by Chand Khan into the mouth of Shri Bakshi, referred to above, could not be taken as the admission of Shri Brij Sunder Sharma. The admission, of course, of an agent under certain circumstances may be admissible against the principal. But it has not been held in the judgment that Shri Bakshi was an agent of Shri Brij Sunder Sharma. From the judgment of the Tribunal it is clear that it is based on inadmissible evidence so far as the question of deputing of Shri Bakshi by the petitioner is concerned. The remaining 3 witnesses have only said that Shri Bakshi had been to Sironj towards the end of September and he talked to the people who had collected there and said that they should vote for the Congress candidate and he would remove their difficulty and repair the tank. This fact alone would not prove that Shri Bakshi had been asked by the petitioner to canvass for him, or to render him assistance in the matter of his coming election in any other way. In *Basappa's case* (12) their Lordships of the Supreme Court held that it was an error apparent on the face of the record if some finding is based on no evidence and is simply based on conjectures and surmises. Legally inadmissible evidence also amounts to no evidence in the eye of Law and if a finding is based thereon it will also be an error on the face of the record. In an unreported case of *Pyarey Lal V. Motilal and others* (D.B. Civil writ Petition No. 247 of 1953 decided on 31st January, 1955) this view was taken by this court in which certiorari was prayed for against the judgment of the election Tribunal. To our mind, the judgment of the majority so far as this point is concerned is erroneous on its face and is liable to be quashed by a writ of certiorari.

*Point No. 4.—Are the minority and majority judgments erroneous on their face so far as issues Nos. 51(a) and 16(a) are concerned?*

AND

*Point No. 5.—Whether the majority judgment is erroneous on its face so far as Issue No. 16(b) relating to the payment of Travelling Allowances and not entering them in the return of election expenses is concerned?*

In the minority judgment the Chairman has held that a general kitchen was run by the petitioner at Sironj and Lateri and that the expenses of that kitchen had not been shown in the return of the election expenses filed by the petitioner. He has, however, not been able to find as to how many workers were fed at Lateri. He has not been able to find that the total expenses of the petitioner went beyond the limit for election expenses set in Schedule 5 of the Act for Rajasthan Assembly. In their majority judgment the two members of the tribunal too have held that kitchens were run at Sironj and Lateri by the petitioner. They have also said that travelling allowances were paid by the petitioner to his agents and neither the kitchen expenses nor the travelling expenses have been shown in the return of the election expenses. However they too have not been able to say that the total of election expenses went beyond the sum prescribed for Rajasthan Assembly in schedule 5 of the Act. Neither the Chairman nor the two members have, therefore, been able to record a finding that the petitioner was guilty of any major corrupt practice within the meaning of section 123 of the Act. However, they have held that the fact that certain expenses incurred by the petitioner were not shown in the return of his election expenses made him guilty of minor corrupt practice under section 124(4). Mr. Pathak argued that there was not sufficient evidence to show that the expenses on the kitchens and travelling expenses of the agents and canvassers were borne by the petitioner. On the other hand, Mr. Tyagi argued that there was evidence to show that the expenses were incurred by the petitioner himself. We do not want to enter into this question because even if a candidate is found guilty of minor corrupt practice under section 124 his election cannot be set aside and we can give the relief claimed to the petitioner even without going into this question.

*Point No. 6.—Is the order of the Tribunal so far as disqualification of the petitioner is concerned illegal and ultra vires?*

AND

*Point No. 7.—Is the order of the Tribunal dated the 30th April, 1956 liable to be quashed?*

Mr. Pathak argued that under section 98 of the Act the only order which an election tribunal can make should be to the following effect:

- (a) dismissing the election petition, or
- (b) declaring the election of the returned candidate to be void, or
- (c) declaring the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected or
- (d) declaring the election to be wholly void. It was argued that under section 98 the tribunal is not authorised to make an order that any of the parties to the election petition be disqualified. Mr. Pathak also argued that there is another section, namely 99 under which certain orders may be made by the election tribunal at the time of making an order under section 98. But even under section 99 although a finding might be recorded whether any corrupt or illegal practice has or has not been proved to have been committed by, or with the connivance of any candidate or his agent at the election, and the nature of that corrupt or illegal practice and the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice and the nature of that practice no power has been given to the election tribunal to order that the candidate be disqualified to stand for the election to the Parliament or to the State Assembly or to vote at such elections.

We have considered the arguments of Mr. Pathak. On a reference to section 98 and section 99 of the Act we find that no power has been given to the tribunal to make order of disqualification as has been made in this case. The tribunal is entitled only to record a finding under section 99(1)(a)(i) or name the persons

proved to have been guilty of any corrupt or illegal practice and the nature of that practice under section 99(1)(a)(ii) of the Act. It is not the business of the tribunal to go any further. We are supported in this view by the judgment of this Court in Pyarelal V. Motilal and others, referred to above, in which a similar question arose and it was held by this court that the election tribunal is not authorised to make any order declaring a candidate to be disqualified under section 141 of the Act. In this matter the tribunal has gone beyond its jurisdiction and the order of the Tribunal in this respect too can be quashed on a writ of certiorari.

The petition is allowed and the order of the Election Tribunal dated the 30th April, 1956 setting aside the election of the petitioner and disqualifying him from the date of the order for membership of Parliament and of the Legislature of every State for a period of 6 years and also for voting at any election for a similar period is set aside. In view of the allegations made by the petitioner in respect of the conduct of the proceedings of the Election Tribunal which he did not press at the time of the arguments, we order that the parties shall bear their own costs.

Sd. J. S. Rauawat,  
Sd. K. K. Sharma,

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[No. 82/4/54/2984.]

By Order,

A. KRISHNASWAMY AIYANGAR, Secy.

